

# Operation: Allied Against Meth



## Task Force 2005 Final Report



Rob McKenna, Attorney General of Washington State



Attorney General Rob McKenna

# Operation: Allied Against Meth

Final Report - November 9, 2005

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Cover Photo: Cowlitz County Drug Task Force members raid a Kelso home for meth and other drugs.

- As appeared in The Daily News, Longview, September 19, 2003. Used with Permission.





# Attorney General Rob McKenna

## Operation: Allied Against Meth

### Task Force Roster

- Hon. Rob McKenna, Attorney General (Chair)
- Hon. Tom Campbell, Washington State Representative
- Mark Couey, Representing the Washington State Patrol (alternate)
- Chris DeChant, Mercer Island Police Department, Representing WACOPS
- Hon. Bill Elfo, Whatcom County Sheriff, Representing WASPC
- Hon. Janice Ellis, Snohomish County Prosecutor, Representing WAPA
- Hon. Jim Hargrove, Washington State Senator
- Hon. Russ Hauge, Kitsap County Prosecutor, Representing WAPA
- Annette L. Hayes, Assistant United States Attorney, Representing United States Attorney for Western Washington
- Chief Gary James, Lummi Tribal Law and Order, Representing Tribal Law Enforcement
- Hon. Stephen Johnson, Washington State Senator
- Assistant Chief Dave Karnitz, Investigative Services Bureau, Washington State Patrol
- Priscilla Lisicich, Safe Streets Campaign, Representing Washington State Methamphetamine Initiative
- James McDevitt, United States Attorney, Representing United States Attorney for Eastern Washington
- Suzanne Moreau, Puget Sound Labor Agency (AFL-CIO), Representing Organized Labor
- Jason Moulton, Safeway Loss Prevention Department, Representing Washington Association of Retailers/Grocers
- Hon. Al O'Brien, Washington State Representative
- Hon. Brad Owen, Lt. Governor
- Hon. Kirk Pearson, Washington State Representative
- Bobbie Petrone-Cassidy, Representing Washington Association of Realtors
- Hon. Sue Rahr, King County Sheriff, Representing WASPC
- Bob Richey, Ellensburg Police Department, Representing WASPC
- Dr. Terree Schmidt-Whelan, Pierce County Alliance, Representing Drug Treatment Community
- Scott Sigmon, Schering-Plough External Affairs, Representing Pharmaceutical Industry
- Hon. Karl Sloan, Okanogan County Prosecutor, Representing WAPA
- Nancy Underwood Long, Lutheran Community Services, Representing Non-Profit Community
- Marcia Via, Greater Spokane Substance Abuse Council, Representing Community Mobilization
- Staff: Chris Johnson, Policy Director, Office of the Washington State Attorney General (AGO), [chrisj2@atg.wa.gov](mailto:chrisj2@atg.wa.gov), (360) 586-4562



# Attorney General Rob McKenna

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### Introduction



Fellow Washingtonians,

The production, distribution and abuse of methamphetamine has become the number one illegal drug threat in our state and region. While crack cocaine and heroin abuse are still a problem, especially in urban areas, methamphetamine has taken root in nearly every community in the state. It is cheap, easy to manufacture, and produces an intense and long-lasting high for the user. Unfortunately, users can also become addicted almost immediately and the side effects of methamphetamine use make this one of the most toxic synthetic drugs available.

I am absolutely certain that methamphetamine is the most dangerous illegal drug we have yet seen consumed on a mass scale. In addition to the harmful effects that meth has upon those who use it, it is absolutely devastating to those around them. Meth users are poisoning our children and polluting our environment. Our jails and prisons are full of criminals who have committed property crimes, identity theft, sexual assault, and domestic violence, all while under the influence of methamphetamine.

Earlier this year, I announced "*Operation: Allied Against Meth*," my strategy to fight this dangerous drug in our state. We have hired two new attorneys in our office to assist local prosecutors in complex meth-related cases and we have visited communities all over the state, spreading the prevention message. Now I am pleased to present the findings of the "*Operation: Allied Against Meth*" Task Force. From the outset, the goal of this task force was clear: deliver a set of recommendations on how my office and the rest of state government can do a better job of helping the local folks already fighting the meth problem on the ground in their communities.

Law enforcement officers, prosecutors, treatment experts, and community mobilizers were just a few of the stakeholder groups represented on the task force. The three committees - Demand Reduction, Cleanup and Governance, and Criminal Sanctions - all started with distinct missions, but have produced common recommendations. In fact, one of the most satisfying aspects of the task force process has been to see law enforcement officers, social workers, and grass-roots leaders all agreeing on the same set of solutions.

Please read the attached report and I think you will agree that we must all be unified in the war on methamphetamine.

Sincerely,

Rob McKenna

Attorney General of Washington State





Attorney General Rob McKenna

# Operation: Allied Against Meth

## Subcommittee on Demand Reduction

- **Hon. Jim Hargrove (Chair)**  
Washington State Senator
- **Hon. Tom Campbell**  
Washington State Representative
- **Chief Gary James**  
Lummi Tribal Law and Order, Representing Tribal Law Enforcement
- **Hon. Sue Rahr**  
King County Sheriff, Representing WASPC
- **Dr. Terree Schmidt-Whelan**  
Pierce County Alliance, Representing Drug Treatment Community
- **Nancy Underwood Long**  
Lutheran Community Services, Representing Non-Profit Community Representative
- **Marcia Via**  
Greater Spokane Substance Abuse Council, Representing Community Mobilization



## FINAL RECOMMENDATIONS OF THE SUBCOMMITTEE ON DEMAND REDUCTION

### 1. Drug Courts - Findings:

Both felony and non-felony drug courts are authorized in state law, as are the minimum requirements for participation. However, some further clarification may be necessary, including explicit authorization for juvenile drug courts.

#### Recommendations:

- Ensure that the recent statutory changes enacted in the Omnibus Mental Health and Substance Abuse Treatment Act (E2SSB 5763) have resolved concerns and clarified provisions related to which offender populations can be ordered to participate in drug court treatment.
- Provide in state law explicit authorization for therapeutic drug courts for juveniles. The following language is proposed for addition to the state's drug court statute (RCW 2.28.170): "Drug court" also includes, but is not limited to, courts whose jurisdiction is conferred over juvenile offenders pursuant to RCW 13.40 (juvenile drug courts), and upon parents, guardians, or legal custodians in dependency cases pursuant to RCW 13.34 (dependency/family drug courts).

**Meth use doesn't just affect those who use it - it also becomes the problem of users' families, co-workers and neighbors. This is a statewide issue that requires an organized, far-reaching response.**

**-Sen. Jim Hargrove, Chairman  
of the Senate Human Services  
& Correction Committee**

### 2. Treatment - Findings:

In 1993, Rutgers University conducted a cost of illness study for the President's Commission on Model State Drug Laws entitled Socioeconomic Evaluations of Addictions Treatment. Among other findings, the study concluded that the total direct and collateral costs of addiction to society were between \$150 and \$200 billion annually. The study further concluded payment for treatment accounts for "only 10 percent of the overall cost of illness spending for alcoholism and 5 percent of the overall cost of illness expenditures for drug dependency."

The Legislature has provided significant additional resources to fund drug treatment in the current biennium. However, the vast majority of these services will be made available to



clients eligible for treatment through the Department of Social and Health Services Division of Alcohol and Substance Abuse (DASA). Unfortunately, many meth addicts are outside the DASA treatment delivery system, and may suffer from both substance abuse and mental health problems.

### **Recommendations:**

- Support implementation of proposed rural and urban treatment expansion in 2006 and 2007 for DASA-eligible clients.
- Recommend adoption of best practices and a unified service delivery system, for individuals with mental health, substance abuse or co-occurring substance abuse and mental health disorders.
- Increase treatment opportunities for drug users who are not DASA-eligible, particularly those sentenced to community supervision under Washington's Drug Offender Sentencing Alternative (DOSA) law.
- Encourage counties to support and implement provisions in the Omnibus Mental Health and Substance Abuse Treatment Act (E2SSB 5763) that allow county councils to approve a 1/10th of 1 percent sales tax for new and expanded drug and mental health treatment, and engage in media outreach in support of the tax.

Sam Chang, owner of Quick Stop #5 in Kelso, listens as his wife, Moon, talks with the Cowlitz County Sheriff's Office Meth Enforcement Team.

- As appeared in the The Daily News, Longview, March 6, 2003. Used with Permission.



As appeared in The Daily News

### 3. Housing and Support Services - Findings:

Drug offenders released into community supervision have difficulty finding clean and sober, affordable housing. Without such housing and the opportunity to access on-site counseling services such as Narcotics Anonymous, even those offenders who have successfully completed treatment are more likely to suffer a relapse. Without a temporary or permanent address, it is difficult for recovering addicts to seek counseling, job training and employment, and to rebuild their lives. In addition to the treatment and health care services already being provided by the public sector to eligible recovering addicts, many faith-based organizations are providing emergency shelter and support services to recovering addicts outside the public delivery system.

#### Recommendations:

- Support housing resources for substance abusers in treatment. Assist landlords and property owners by state-supported insurance, remediation or other programs to assist those who lease to tenants who damage property through drug use or manufacture. Provide other incentives to landlords to lease to those in treatment. Support self-run recovery housing models such as Oxford House.
- Recommend that the DSHS Division of Alcohol and Substance Abuse hold a summit with faith-based organizations (FBOs) to discuss the following:
  - a. The appropriate role for FBOs in filling support service delivery gaps to recovering drug addicts;
  - b. The needs of specific populations currently outside the state treatment and health care and addiction treatment delivery systems;
  - c. Guidelines to expedite DASA certification for FBO's where appropriate.

**If we're going to get a handle on meth, it will require ongoing involvement by treatment, prevention and law enforcement in conjunction with other organizations in the Washington State Meth Initiative model. Meth is highly addictive, and the people who expose themselves to it one time usually don't stop there. This task force provided a set of comprehensive recommendations many of which could assist in our fight against meth and I look forward to continuing a dialogue with them.**

**- Dr. Terree Schmidt-Whelan**

### 4. Transportation - Findings:

Non-violent drug offenders sentenced to community supervision often encounter multiple barriers to accessing outpatient treatment

The battle with meth cooks has been that they produce an insidious highly addictive drug that is devastating to the central nervous system. Not only is meth taking a toll on those who become addicted, but the meth cooks create unimaginable problems for the communities where they are manufactured. The toxic cleanup of abandoned labs falls on the county at great expense, not only in the cleanup, but in treating addicts and imprisoning those who get caught.

- State Rep. Tom Campbell

services, including a lack of transportation alternatives. Since drug offenders may be without a driver's license and outpatient services could be in another county, lack of transportation can work against successful completion of outpatient treatment.

### **Recommendations:**

- The definition of “special needs transportation” is currently broad enough to include drug offenders seeking treatment from DASA-licensed treatment facilities. However, many of these recovering addicts are unaware of how to access such services. Recommend that the Agency Council on Coordinated Transportation (ACCT) implement an “awareness campaign” through Department of Corrections (DOC) community corrections officers and DASA-licensed service providers to promote the use of special needs transportation services, the ACCT website and the Statewide Trip Planner to recovering addicts seeking treatment.
- Make funding to available to local transit properties through the Criminal Justice Treatment Account, allocating a certain percent to be used for transportation for those in treatment. The ACCT should be consulted in how these funds should be distributed.
- Encourage ACCT to adopt as a part of its strategic program, a plan to increase access by recovering addicts to existing special needs transportation services already offered by Medicaid brokerages and local transportation coalitions. In particular, the plan should focus on reducing barriers to cross-jurisdictional trips and services offered by rural transit properties.

### **5. Employment - Findings:**

Drug offenders who have finished their term of incarceration and successfully completed treatment find it difficult, if not impossible, to find sustainable employment. Without steady employment, the former addict may be more likely to return to the “using and manufacturing” lifestyle.



### **Recommendations:**

- Revive the successful Drug-Free Workplace Program that was originally enacted in 1996 as part of the state's labor regulation laws (RCW 49) and expired in January 2001.
- Provide incentives to employers to retain employees with substance abuse issues. Incentives could include a worker compensation premium discount as in the 1996 Act. Support requirements of employees to remain in treatment, make progress and be subject to urinalysis tests.



**Chief Deputy for the Attorney General's Office Craig Wright distributes "Don't Meth Around" bracelets at Horizon Middle School in Ferndale in November 2005**

**- AGO Photographer**

### **6. Education and Prevention - Findings:**

Educating the general public, as well as certain at-risk populations, including school children, may be the best step we can take to prevent "downstream" costs such as drug treatment and incarceration. Given that public education at the primary and secondary levels in this state operates as a "local control system," the Office of the Superintendent of Public Instruction (OSPI) does not have the authority to implement a mandatory, statewide drug prevention curriculum. The OSPI does set standards for educational achievement, including basic life skills and general

Law enforcement has made significant progress in reducing the number of meth labs in this area during the past few years. However, we are now seeing an increase in imported meth that we believe is coming from “super labs” in Mexico. We must address this and slow down the spreading problem.

- King County Sheriff Sue Rahr

health education, and it also allocates a portion of available federal “Safe and Drug-Free Schools and Communities” funds. These resources, when combined with other block grants and tobacco settlement monies, help fund prevention/intervention specialists directly in public schools. An excellent example of school-based prevention and intervention is the True North Program implemented under contract with ESD 113 in Grays Harbor County.

Unfortunately, the roughly \$3 million available annually for these efforts is not nearly enough to bring the anti-drug message directly public school students, not to mention the general population. The state desperately needs a drug prevention and treatment promotion campaign mirroring previous and ongoing efforts to prevent underage drinking, and the smoking prevention and cessation campaign underwritten by tobacco master settlement agreement funds.

### **Recommendations:**

- Develop and support public service announcements and media education focusing on the following messages:
  - a. The cost/benefits of investing in chemical dependency treatment and its ultimate cost savings to the taxpayer.
  - b. The ways in which investing in treatment improves public safety by reducing crime and victimization.
  - c. The dangers of drugs and methamphetamine in particular. Examine other states’ efforts at anti-drug campaigns, including Hawaii’s media and education programs.
  - d. The cost/benefit studies of anti-drug campaigns that demonstrate investments in anti-drug campaigns reduce actual drug usage.
- To ensure that a comprehensive anti-methamphetamine messaging campaign is implemented on an ongoing basis beginning in 2006, the Office of the Attorney General shall do the following:

- a. Participate directly with the National Council for the Prevention of Drug Abuse and the Washington Council on the Prevention of Drug Abuse on a soon-to-be-announced statewide methamphetamine reduction program, including television and radio public service announcements and newspaper ads, articles and opinion pieces.
- b. Act as a partner with the Washington State Association of Broadcasters to develop and implement a statewide drug-prevention media campaign.
- c. Support efforts by students in the Washington State University School of Communications to develop the content for a methamphetamine and identity theft prevention campaign.
- d. Cooperate with the DSHS Division of Alcohol and Substance Abuse to conduct an ongoing campaign to prevent underage drinking.



**Attorney General Rob McKenna meets students at Kennewick High School on the Operation: Allied Against Meth Tour in May 2005.**

**- AGO Photographer**

- The Office of the Attorney General will coordinate with local educational school service districts, school districts, individual schools and the Comprehensive



One of the most valuable efforts that came from the Attorney General's Meth Task Force for children in our state being affected by the meth epidemic was the formation of a Statewide Drug Endangered Children's Protocol Committee. Statistics are saying that nearly 70 percent of children in our state being placed in out-of-home care can be linked to meth. That's a staggering number. Through the efforts of Attorney General McKenna's Task Force and other groups forming around the state, there is a concerted effort to fight this epidemic with more education and legal reform.

- Nancy Underwood Long,  
Lutheran Community Services

Health Education Network (CHEN) to bring the anti-methamphetamine message to school-aged children and adolescents.

- The Office of the Attorney General should work with other attorneys general and the US Congress to preserve and increase funding for the Safe and Drug-Free Schools and Communities program.

## **7. Community Methamphetamine Action Teams - Findings:**

The Washington State Methamphetamine Initiative (WSMI) is a grass-roots organization which has established a community methamphetamine action team in nearly every county in the state. These interdisciplinary teams, composed of law enforcement officers, treatment professionals, educators and public health officers, are performing the majority of the community mobilization, education and prevention activities to stop substance abuse in local communities statewide, yet they are woefully under-funded.

### **Recommendations:**

- Increase funding resources flowing to local Meth Action Teams, as distributed by WSMI and the state Department of Community, Trade and Economic Development, beyond the \$4,000 per year currently budgeted.
- In addition to baseline allocation for each team, create a competitive grant process based on a specific list of recommend activities and established best practices.

## **8. Drug endangered children - Findings:**

Several Washington counties have already pioneered the development and implementation of Drug Endangered Children (DEC) guidelines, bringing first responders together in an effort to provide a continuum of services to children rescued from drug labs, or from homes where drug use is prevalent. The Washington State Methamphetamine Initiative conducted two DEC training sessions this September, and has convened a group of 31 self-

identified stakeholders to draft a charter for a state chapter of the National Alliance of Drug Endangered Children. Nonetheless, we have a long way to go before every county in the state has its own set of procedures in place.

#### **Recommendations:**

- Strongly encourage all counties to create county-wide guidelines on Drug Endangered Children. Each county should, within available resources, create guidelines or protocols based on the “We Care Matrix,” with the collaboration of law enforcement, firefighters, hospital emergency room workers and nurses, and DSHS Child Protective Services.
- Establish a Washington Chapter of the National Alliance for Drug Endangered Children, and a voluntary council or steering committee to help implement the national DEC template in our state.
- Recommend that every local methamphetamine action team send representative to DEC training on an annual basis, and conduct a review of established DEC guidelines no less than every five years. After a state DEC chapter has been established, a process for identifying grant and other funding sources should be identified to make ongoing training possible.

It is a pleasure to work with the Attorney General's Office on the meth issue in Washington state. We are so fortunate to have leaders in our state take an active role in substance abuse. Together... we can make a difference.

**- Marcia Via, Greater Spokane Substance Abuse Council**

#### **9. Vulnerable adults - Findings:**

Vulnerable adults who reside in state-licensed group homes, attend activities in adult day care centers, or receive home-based health care and chore services, may be exposed to the manufacture or use of methamphetamine by caregivers, leaving them vulnerable to harmful health effects. These individuals are dependent upon their caregivers and have few avenues of relief available.

#### **Recommendations:**

- Propose support mechanisms for vulnerable adults who are victims of drug manufacturing in their homes. Develop best practices and adopt protocols for housing

elderly evacuated from unsafe homes due to drug manufacture.

- Examine laws regarding forfeiture of homes due to drug manufacture for possible exceptions when elderly adult is innocent victims. Establish receiving homes or shelters for those made homeless by drug manufacturing.
- Encourage adoption of “vulnerable adult” guidelines and training for first-responders, similar to the “We Care” guidelines for drug-endangered children. Consult with “vulnerable adult task forces” already in existence in Thurston and other counties to develop these guidelines. Create a public awareness and informational campaign, including public education on existing 1-800-ENDHARM hotline for reporting abuse of vulnerable adults.
- Expand the definition of “abuse” in the state’s vulnerable adult statute (RCW 74.34.020) to include abuse by manufacture of methamphetamine in the home.



Attorney General Rob McKenna

## Operation: Allied Against Meth

### Subcommittee on Cleanup and Governance

- **Hon. Janice Ellis (Chair)**  
Snohomish County Prosecutor, Representing WAPA
- **Hon. Stephen Johnson**  
Washington State Senator
- **Assistant Chief Dave Karnitz, (Capt. Mark Couey, Alternate)**  
Investigative Services Bureau, Washington State Patrol
- **Priscilla Lisicich**  
Safe Streets Campaign, Representing Washington State Methamphetamine Initiative
- **Hon. Kirk Pearson**  
Washington State Representative
- **Bobbie Petrone-Cassidy**  
Representing Washington Association of Realtors
- **Bob Richey**  
Ellensburg Police Department, Representing WASPC





## **FINAL RECOMMENDATIONS OF THE SUBCOMMITTEE ON CLEANUP AND GOVERNANCE**

The following are the final consensus findings and recommendations of the Cleanup & Governance Committee.

The committee has set forth specific findings regarding all of our study topics and a number of specific recommendations for legislation and other action below. We recommend specific action where there is a strong policy basis and legal framework to act within.

We were not able to formulate specific action items regarding all of the cleanup and governance issues we studied. We therefore provide suggestions for future study regarding matters where the scope and complexity of the issues are such that they are clearly important to the health, safety and welfare of Washington residents, but where we lacked the capacity to formulate specific action items within the timeframe given.

The committee met four times between August 25 and October 31 and presented its interim recommendations to the Task Force on September 29, 2005. It received information from a variety of subject matter experts during its meetings and reviewed relevant publications and law. The Chair wishes to express her gratitude to Chris Johnson, Policy Director to the Attorney General, to the committee members, and to the many people who made presentations to the committee for their commitment to the work of the committee and to the completion of this final report. It has been an honor to work with such a talented and dedicated group of individuals and agency representatives.

### **1. Cleanup and Enforcement Authority**

State and local health authorities are primarily responsible for meth lab cleanup. The Committee recommends specific changes to Washington's laws on contaminated properties (RCW 64.44) to fill gaps that currently undermine health authorities' cleanup and enforcement efforts.

#### **Findings:**

- Washington's meth property cleanup standards and

**Methamphetamine use is one of the most destructive forces facing our Washington state today. We must coordinate our efforts to eradicate the meth problem in our communities.**

**- Hon. Janice Ellis, Snohomish County Prosecutor**

protocols are the strictest in the Nation. See Appendix A (RCW 64.44) and Appendix B (WAC 246-205).

- State law needs to be refined to better integrate and standardize cleanup protocols and enforcement authority.
- Cleanup and enforcement authority differs from municipal corporation to municipal corporation due to differing governance structures.
- Many of the existing gaps can be filled through amendments to RCW 64.44. See Appendix C (comparison of existing law to the changes proposed below).
- Local health is mandated by RCW 64.44 to assess and require proper remediation of contaminated property. This mandate is unfunded and there are insufficient

Glassware that has been used to mix meth chemicals.

- North Little Rock Police Department. Used with Permission.



resources for state and local health departments to properly certify cleanup contractors, develop cleanup protocols, and assess and oversee cleanup of contaminated drug lab properties, meth-contaminated vehicles, and other contaminated personal property.

- Local health officers lack clear authority under RCW 64.44 to post emergency orders where site contamination

warrants urgent action. Local health officers need this authority to preserve community health, safety and welfare.



Red phosphorus from striker plates of matches is used in the process to manufacture meth.

**- North Little Rock Police Department. Used with Permission.**

- Illegal drug manufacturing processes continue to evolve. The “P2P/Amalgam” method was being used when ch. 64.44 RCW was enacted in 1990; currently labs use the “Nazi/Lithium Anhydrous Ammonia” or “Red Phosphorous” methods. Additionally, drugs other than methamphetamine may begin to be locally produced. Snohomish, King, and Kitsap counties have had to evaluate suspect MDMA/Ecstasy, LSD and Methcathinone labs in the last several years. The RCW definition of “hazardous chemicals” needs to accommodate these manufacturing evolutions.
- Meth manufacturers often claim that their chemicals (commonly available solvents, acids, and bases) are being used for non-meth manufacturing purposes. Therefore, local health can test for methamphetamine as part of the contamination assessment and compare the level of meth found to the decontamination standard. However, RCW 64.44.010 defines “contaminated” as “polluted by hazardous chemicals...”, and the definition of “hazardous chemicals” means “...(a) hazardous substances as defined



Not only is methamphetamine dangerous to manufacture and clean up but crimes such as identity theft, auto theft and violence are collateral elements that make meth lethal to the user and innocent victims in the community.

An action plan and solid legislation will be the first steps to a 'no tolerance' policy on meth and will begin to break the cycle of crimes related to the drug's use. Here at home, it's a top priority.

- State Rep. Kirk Pearson, R-Monroe

in RCW 70.105D.020, and (b) precursor substances as defined in RCW 69.43.010..." Methamphetamine is not a "precursor" (ephedrine and pseudoephedrine are, but local health has no decontamination standard for these), and while local health could use a convoluted process to determine whether methamphetamine meets the 70.105 definition of "toxic," RCW 64.44 should be amended to include the name of the drug being manufactured within the definition of "hazardous chemical."

### Recommendations:

- Amend RCW 64.44.010(3), Washington's law on contaminated properties, to include the drug being manufactured within the definition of "hazardous chemicals:"

"Hazardous chemicals" means the following substances associated with the manufacture of illegal drugs: (a) Hazardous substances as defined in RCW 70.105D.020, (b) precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the state board of pharmacy, has determined present an immediate or long-term health hazard to humans, and (c) the controlled substance(s) being manufactured, as defined in RCW 69.50.101.

- Amend RCW 64.44.010(5) to clarify the definition of "property":

"Property" means any real or personal property, or segregable part thereof, that is involved in or affected by the unauthorized manufacture or storage of hazardous chemicals. This includes but is not limited to single family residences, units of multiplexes, condominiums, apartment buildings, motels, hotels, boats, motor vehicles, trailers, manufactured housing, any shop, booth, garden, or storage shed, and all contents of the above-mentioned items.

- Amend RCW 64.44.020 as follows to allow local law enforcement or other authorized agents to post the initial health warning:

The local health officer shall cause a posting of a written warning on the premises within one working day of notification of the contamination and shall inspect the property within fourteen days after receiving the notice of contamination.

- Add new language to RCW 64.44.020 immediately before the language recommended above to allow local health officers to apply for administrative search warrants:

If access to the property is denied, a superior, district or municipal court within the jurisdiction of the property may, based upon cause to believe that the property is contaminated, issue warrants for the purpose of conducting administrative inspections and seizure of property appropriate to the inspections.



Meth lab in San Juan County.

- As appeared in the San Juan Islander ([http://www.sanjuanislander.com/images/sheriffdept/meth\\_lab/Dscn5670-trailer.jpg](http://www.sanjuanislander.com/images/sheriffdept/meth_lab/Dscn5670-trailer.jpg)). Used with Permission.

- Amend RCW 64.44.030 to enhance and clarify the language that authorizes local health officers to issue and post contamination orders:

If after the inspection of the property, the local health officer finds that it is contaminated, then the local health officer shall issue an order declaring the property unfit and prohibiting its use. The local health officer shall cause the order to be served either personally or by certified mail, with return receipt requested, upon all occupants and persons having any interest therein as shown upon the records of the auditor's office of the county in which such property is located. The local health officer shall also cause the order to be posted in a conspicuous place on the property... The officer shall prohibit use as long as the property is found to be contaminated. A copy of the order shall also be filed with the auditor of the county in which the property is located, where the order pertains to real property, and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.

A meth lab disposed of in the trash.

- North Little Rock Police Department. Used with Permission.



- Add a new section to RCW 64.44.030 to authorize local health officers to post emergency orders where public health and safety needs warrant such action:
  - (2) If the local health officer determines immediate action is necessary to protect public health, safety

or the environment, the officer may issue or cause to be issued an emergency order, and any person to whom such an order is directed shall comply immediately. Emergency orders issued pursuant to this statute shall expire no later than 72 hours after issuance and shall not impair the health officer from seeking an order under section 1.

- Recommend future amendments to RCW 64.44.030 and the Washington Administrative Code that will, after the Department of Licensing has the capacity to brand vehicle titles with specific information, authorize health officers to file orders pertaining to vehicles with DOL and require DOL to brand the vehicle as meth contaminated, unless the local health department files a subsequent release for resale order.
- Add new language to RCW 64.44.040 to authorize local health officers to take expanded action regarding contaminated properties:
  - (1) Upon issuance of an order declaring property unfit and prohibiting its use, the city or county in which the contaminated property is located may take action to prohibit use, occupancy, or removal of such property; condemn, decontaminate, or demolish the property; or to require the property be vacated or the contents removed from the property. The city or county may use an authorized contractor if property is demolished, decontaminated, or removed under this section. The city, county or contractor shall comply with all orders of the health officer during these processes. No city or county may condemn, decontaminate, or demolish property pursuant to this section until all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted, but may prohibit use, occupancy, or removal of contaminated property pending appeal of the order.
- Add new section (2) to RCW 64.44.040 to clarify law enforcement and other governmental officials' authority on contaminated property:

**Washington is sixth in the nation for methamphetamine laboratories. Our laws must reflect that fact so law enforcement can do everything possible to rid our communities, especially our hard-hit rural communities, of the meth epidemic.**

**- Mark Couey, Washington State Patrol**



- (2)(a) It shall be unlawful for any person to enter upon any property, or to remove any property, that has been found unfit for use by a local health officer pursuant to RCW 64.44.030.
- (b) This section shall not apply to: (i) health officials, law enforcement officials, or other government agents performing their official duties; (ii) authorized contractors or owners performing decontamination pursuant to authorization by the local health officer; and (iii) any person acting with permission of a local health officer, or of a superior court hearing examiner following an appeal of a decision of the local health officer.
- (c) Any person who violates this section shall be guilty of a misdemeanor.
- Amend RCW 64.44.050 to require property owners to submit written work plans along with the cleanup contractor and to clearly authorize full cost recovery by local health officials:

(1) An owner of contaminated property who desires to have the property decontaminated shall use the services of an authorized contractor unless otherwise authorized by the local health officer. The contractor and property owner shall prepare and submit a written work plan for decontamination to the local health officer. The local health officer may charge a reasonable fee for review of the work plan. If the work plan is approved and the decontamination is completed and the property is retested according to the plan and properly documented, then the health officer shall allow reuse of the property. A release for reuse document shall be recorded in the real property records and with the department of motor vehicles indicating the property has been decontaminated in accordance with rules of the state department of health. The property owner shall be responsible for (a) the costs of any property testing which may be required to demonstrate the

presence or absence of hazardous chemicals and (b) the costs of the property's decontamination and disposal expenses, as well as costs incurred by the local health officer resulting from the enforcement of this chapter.

- Add new section (2) to RCW 64.44.050 to allow the health officer to set a time frame within which cleanup shall be completed:

(2) The local health officer may establish a time period in which decontamination shall be completed. The local health officer, city or county may assess a fine or institute appropriate action upon failure to meet the decontamination deadline.

- Add new section (7) to RCW 64.44.050 to require independent third party sampling of contaminated property:

“Independent Third Party Sampling” means that the person conducting the sampling and testing is not an employee, agent, representative, partner, joint venturer, shareholder, or parent or subsidiary company of the contractor, the contractor's company or property owner.

- Amend RCW 64.44.060(1) to clarify the responsibility of those working under the supervision of a cleanup contractor:

A contractor, supervisor or worker may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health. The department shall establish performance standards for contractors, supervisors and workers by rule in accordance with chapter 34.05 RCW, the Administrative Procedures Act. The department shall train and test, or may approve courses to train and test, contractors, supervisors and workers on the essential elements in assessing property used as an illegal drug manufacturing or storage site to determine hazard

Many people are not aware of all the resulting impacts of meth, such as orphan drug labs and abandoned properties. Thanks to Attorney General, Rob McKenna for putting together a task force to look at these issues. The recommendations submitted by the task force are a great start towards cleaning up blighted properties and meth-impacted neighborhoods.

- **Bobbi Petrone-Cassidy,**  
**Washington Association of Realtors**

reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment, methods for proper decontamination, demolition, removal and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, and after a background check, the contractor, supervisor, or worker shall be certified.

- Amend RCW 64.44.060(4) to expand DOH's authority to take action regarding cleanup contractors:

Meth chemicals and components being stored until use.

- North Little Rock Police Department. Used with Permission.



The department may deny, suspend, revoke, or place restrictions on a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to this chapter. A certificate may be denied, suspended, or have restrictions placed on it on any of the following grounds: (a) failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel; (b) failing to perform decontamination, demolition, or disposal work using DOH-certified decontamination personnel; (c) failing to file a work plan; (d) failing to perform work pursuant to the work plan; (e) failing to perform

work that meets the requirements of the department and the requirements of the local health officers; (f) failing to properly dispose of contaminated property, (g) committing fraud or misrepresentation in: (i) applying for or obtaining a certification, recertification, or reinstatement; (ii) seeking approval of a work plan; and (iii) documenting completion of work to the department or local health officer; (h) failing to cooperate with the department or the local health officer; (i) failing the evaluation and inspection of decontamination projects pursuant to RCW 64.44.090; (j) conviction of any gross misdemeanor or felony. For purposes of this subsection, the term “conviction” is intended to apply to all instances in which an adjudication of guilt has occurred, whether or not a deferred or alternative sentence has been imposed, or (k)...

- Amend RCW 64.44.060(5) to clarify the responsibility of those working under the supervision of a cleanup contractor:

A contractor, supervisor, or worker who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation.

- Amend RCW 64.44.070(2) to expand the use of third party sampling with a goal of increasing the accountability of the cleanup contractors:

The department shall adopt rules for decontamination of a property used as an illegal drug laboratory and methods for the testing of porous and non-porous surfaces, ground water, surface water, soil, and septic tanks for contamination. The rules shall establish decontamination standards for hazardous chemicals, including but not limited to methamphetamine, lead, mercury, and total volatile organic compounds. The department shall also adopt rules pertaining to independent third party sampling to verify satisfactory decontamination of property deemed contaminated and unfit for use.



- Add new section, RCW 64.44.090, to allow evaluation of decontamination projects:

The Department shall evaluate annually a number of the property decontamination projects performed by licensed contractors to determine the adequacy of the decontamination work, using the services of an independent environmental contractor or state or local agency. If a project fails the evaluation and inspection, the contractor is subject to a civil penalty and license suspension, pursuant to RCW 64.44.060(4) and (5); and the contractor is prohibited from performing additional work until deficiencies have been corrected.

**Attorney General Rob McKenna with Priscilla Lisicich from Safe Streets Campaign on Pierce County meth tour in May 2005**

**- AGO Photographer**



- Establish secure funding for state and local health departments to ensure cleanup occurs and that properties can be safely reoccupied.

## **2. Remediation of Real and Personal Property**

A variety of strategies exist to ensure that meth-contaminated real and personal property can be remediated and/or properly disposed. Where meth-contaminated real property has been abandoned, new strategies that promote the voluntary conveyance of these properties to the public sector for cleanup are warranted,

including expanded immunity under Model Toxics Control Act. All cleanup costs are expensive, whether they are borne by public sector or private property owners, and these costs warrant law changes that will help innocent landowners obtain financial assistance for cleanup costs. Finally, there are inadequate resources to fully address meth-contaminated personal property, such as vehicles. The scope of this public health issue requires further study before appropriate action can be recommended.

### **Findings:**

- The standard for meth property cleanup is based upon a readily determinable contamination level of less than or equal to 0.1 micro grams per 100 square centimeters. WAC 246-205-541. The standard has not been correlated to human or other health standards; it is based upon an achievable level of detection and the ability to remediate to that level. Epidemiological research is underway on this topic.
- The fiscal impact of meth property cleanup costs can be devastating to property owners.
- Property owners with meth labs on their property typically fall into one of four distinct categories:
  - a) those who knowingly use their property to manufacture or deal drugs;
  - b) those who exercise due diligence in their rental practices and nevertheless are victimized by lessees who manufacture meth on their property;
  - c) those who, but for their failure to exercise due diligence in their rental practices, would not have meth manufactured on their property (i.e. those who turn a blind eye to their lessee's activities); and
  - d) individuals who are taken advantage of by substance-abusing family members.
- Property owners who knowingly use their property to manufacture or deal drugs may have their property seized

and forfeited under our drug forfeiture laws.

- Municipal corporations that take title to property obtained through a drug forfeiture actions are immune from liability under the Model Toxics Control Act (MTCA), RCW 70.105D
- Municipal corporations that take title to property through a drug forfeiture action have a duty to cleanup the property consistent with the requirements of RCW 64.44
- Property owners who use due diligence in their rental practices are far less likely to have their properties used by meth manufacturers.
- Recommended rental practices are included within publications distributed by the State Department of Health, such as “Preventing Drug Labs on Rental Property” and “Preventing Drug Labs on Motel Property.”
- Cleanup costs for meth-contaminated property may be covered by vandalism insurance, which is available to both residential and commercial real estate owners.
- While commercial or sophisticated landlords may customarily obtain vandalism insurance, private homeowners are unlikely to do so.
- Homeowner’s insurance typically excludes intentional acts from coverage and the creation and maintenance of a meth lab is considered an intentional act.
- All real estate sellers must complete the following disclosure on the Residential Real Property Transfer Disclosure Statement (a/k/a NWMLS form 17/W.A.R form D-5) as required under RCW 64.06, dealing with seller’s disclosures: “Has the property ever been used as an illegal drug manufacturing site?”
- There is a strong policy basis to support the proposition that individuals who have cleaned up meth-contaminated property to state specifications should not be required to

make any disclosures other than that required by RCW 64.06.

- There is a strong policy basis to help innocent landowners shoulder the burden of meth-contaminated property cleanup costs. Law enforcement and public health officials rarely encounter a property owner who fits the definition of a truly “innocent” landlord. Nevertheless, such property owners do exist.
- A revolving cleanup fund could benefit innocent landowners who are faced with expensive cleanup costs. It is unclear to the committee how such a program could be fairly administered so as to ensure that only truly innocent property owners benefit from it.
- The State Department of Community Trade and Economic Development (CTED) administers the state’s “Brownsfields Funds.” These are funds available to cleanup environmentally hazardous real estate other than Superfund sites. Innocent third-party purchasers of meth-contaminated property may apply to CTED for funds to cleanup meth-contaminated property. Given the manner and means by which Brownsfields funds are prioritized for spending, it is unclear whether a meth-contaminated property owner will be able to successfully compete for these funds (most Brownsfields funds are allocated to underground fuel storage tank removal and remediation).
- Landowners who abandon meth-contaminated real estate typically do so where the property has insufficient value to cause them to cleanup the property themselves or to sell to a private party.
- Counties may institute a tax foreclosure action where property taxes are three years in arrears, including meth-contaminated real estate. Property obtained through a tax foreclosure has the same level of immunity that property obtained through a drug forfeiture action now receives.
- Real property may also be condemned under RCW 35.80A,

**A full 95 percent of users are addicted to meth after just six months of using it. If we are going to continue to make progress against the highly addictive drug, we need to continue the interdisciplinary approach built by the Washington State Methamphetamine Initiative that combines prevention, treatment, ecology, public health and proactive criminal justice and child endangerment strategies.**

**- Dr. Priscilla Lisicich,  
Washington State Meth  
Initiative and Safe Streets  
Campaign**

state's law on condemnation of blighted property. RCW 35.80A.010 provides, in relevant part, that a county, city or town may acquire property by condemnation where it constitutes "a blight on the surrounding neighborhood." Such a blight is defined as property that meets any two of three different factors: 1) the property has not been lawfully occupied for one year; 2) the property is a threat to public health, safety or welfare; or 3) the property has been associated with illegal drug activity during the previous 12 months. Such property may be condemned for public use or re-sold for other uses.

- The committee is aware and respectful of private property rights. Accordingly, acquisition of property through condemnation proceedings is generally disfavored. However, the committee favors situations wherein property owners may voluntarily convey their meth-contaminated property to a public entity so that it can be remediated and applied to a pro-social purpose such as clean and sober housing. Note that such a scenario is only likely to occur where the property lacks sufficient value as to be of interest to a private party.
- The committee recommends development of model administrative procedures that can be adopted by local governments to promote prompt, effective cleanup and preserve property owners' due process rights.
- The extent of personal property contamination of meth property is poorly understood and the proper disposal of such personal property is less well understood. Currently, there are insufficient means by which the disposal of clothing, toys, and household goods that may be contaminated by meth are tracked. The scope of the problem posed by meth-contaminated personal property is the subject of comprehensive studies, primarily through the National Jewish Medical and Research Center.
- There are insufficient resources for health officers to test, tow, impound, and crush meth-contaminated automobiles and recreational vehicles. While cars and RVs can be cleaned, it often does not make economic sense to do



so. Thus, some entities prefer to superheat and crush meth vehicles, but they have little enforcement authority to do so (unless the vehicles are forfeited pursuant to the state's drug seizure laws).

- The Department of Licensing currently lacks the technology needed to be able to “brand” contaminated vehicles. DOL is, however, upgrading its computer system so that it may be able to develop a “contaminated” and an “uncontaminated” brand. The upgraded system should be available within two years.
- A National Motor Vehicle Title Information System is being developed that will standardize brands. This system will help identify stolen vehicles and may also help discourage the transportation of drug-contaminated vehicles over state lines. The system may be operational within a few years.
- Many municipal corporations lack appropriate resources through which they can tow, impound and store meth-contaminated vehicles while testing, remediation, and other actions occur.
- Public funding is available for real property remediation through Brownsfields funds, but access to those funds is unlikely because of the demand for those dollars by other entities, such as those seeking to remediate contamination caused by underground fuel storage tanks.
- It is not cost effective to remediate meth contamination in motor homes and disposal is difficult because they are not suitable for crushing, like automobiles.
- The need to have confidence that property has been thoroughly cleaned supports expanded authority for health officers and the Department of Health to oversee, certify and audit property cleanups.
- There are remedies available at civil law to seek redress from landowners who fail to properly disclose and/or cleanup meth-contaminated properties.

**Despite increased efforts by the Legislature and law enforcement over the years, Washington continues to have a serious problem with methamphetamine and the terrible damage it causes to individuals, families, communities and the environment. The members of this task force are committed to developing strong solutions to the meth problem for the benefit of the people of Washington.**

**- Sen. Stephen Johnson, R-Kent**

- Property owners may independently clean property, but they must comply with the requirements of ch. 64.44 RCW, including the approval of the local health officer. Most cleanup projects require the expertise of a contractor certified by the State Department of Health.

### **Recommendations:**

- Support additional research to determine the size and scope of the unremediated meth-contaminated property problem. Such research should evaluate real and personal property.
- Advocate for secure funding for state and local health departments to ensure cleanup occurs.
- Support legislation that will limit liability for municipal corporations that acquire title to a meth-contaminated property through a voluntary conveyance and then cleanup that property for the purpose of dedicating it to a public good. For example, RCW 70.105D.020(12)(b)(i), which was amended during the last legislative session to hold municipal corporations harmless where they acquire meth property through a drug forfeiture action, could be further amended to achieve this goal:
  - (i) An agency of the state or unit of local government which acquired ownership or control through a drug forfeiture action under RCW 69.50.505, through a voluntary conveyance for the purpose of remediating the property for a public purpose, or involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility.
- Support legislation as described above for private entities that accept a voluntary conveyance of meth-

contaminated property and clean it up for a public purpose (such as a 501(c)(3) organization).

- Study further the concept of authorizing CTED to grant funds to local health agencies to cleanup and sell contaminated properties for profit - the profit to be deposited in a revolving fund for future cleanup projects.



**Attorney General Rob McKenna, Snohomish County Prosecutor Janice Ellis and AGO Policy Director Chris Johnson at a meeting of the “Operation: Allied Against Meth” Task Force.**

**- AGO Photographer**

- Support a pilot project wherein one or more abandoned properties (which could be defined as a property that is three or more years in arrears on its property taxes) is foreclosed upon and remediated for use as clean and sober housing.
- Develop a “best practices” approach to the identification and remediation of orphaned methamphetamine-contaminated properties. Approaches could include

the voluntary conveyance of property to a public entity, or acquisition through a condemnation proceeding that would clean the abandoned or blighted property and dedicate the property to a public good such as clean and sober housing.

- Study further the concept of a revolving fund to which innocent property owners could apply to help defray property remediation costs.
- Develop clear procedures for property owners who wish to voluntarily convey their property to a public entity for cleanup and dedication to a public purpose.
- Study further amendments to the MCTA, RCW 70.105D, to hold harmless entities that take voluntary title to meth-contaminated real estate.
- Do not expand the authority under the Consumer Protection Act to authorize legal action against those who fail to file “release for resale” reports with the Department of Health.
- Support research efforts to determine the scope of the problem statewide, regarding unreported and/or unremediated real property and personal property (including autos, mobile homes, and recreational vehicles).

### **3. Future Governance**

Policy development regarding demand reduction, interdiction, and property cleanup should be centralized in one board. The Governor’s Council on Substance Abuse is well-situated to continue this work and should work closely with the Attorney General and other stakeholders to implement policy recommendations from this Task Force and the recent Washington State Summit on Alcohol and Other Drug Issues.

## Findings:

- Meth is now a national problem. Washington is considered a leader by other states that are trying to determine and implement effective ways to address meth addiction, meth manufacturing, and meth cleanup issues in their communities.
- The Washington State Methamphetamine Initiative is the current statewide structure to address methamphetamine use, production, and cleanup. It coordinates local, state and federal resources in an interdisciplinary model involving treatment, prevention/community mobilization, proactive enforcement, ecology and public health.
- Much of the state's success is grounded in the grassroots network of Meth Action Teams that convene key stakeholders in all 39 counties of the state. The Meth Action Teams were spawned as part of the statewide-funded Community Mobilization program. The purpose of the Meth Action Teams is to bring together key stakeholders who can identify local assets and build collaborations to eradicate domestic meth production, meth use and abuse and endangerment to small children, and to cleanup contaminated properties.
- Current funding for the Washington State Methamphetamine Initiative originates through a Congressional proviso. With Congress looking to a superfund to address the national meth crisis, funding may be more predictable in the future.
- Current funding for the Washington State Methamphetamine Initiative is unstable.
- The Governor's Methamphetamine Coordinating Committee ("GMCC") was established in 2002 to unify state, federal and local efforts to address meth use, production and prevention. This policy board has a practical relationship with the Governor's Council on Substance Abuse. A broad cross-section of community leaders, professionals, and elected officials serve on the GMCC.

**The state patrol concluded an investigation into a methamphetamine trafficking ring resulting in seven arrests. This group was trafficking in crystal methamphetamine, a form that is known for high level of purity. Recent trends show an increase in crystal methamphetamine being smuggled into the country from Mexico. The importance of cross-jurisdictional cooperation cannot be ignored. That's why the findings of this report are so important.**

**- Asst. Chief David J. Karnitz,  
Washington State Patrol  
Investigative Services**



- The Governor's Council on Substance Abuse ("GCOSA") was created in 1994 by Executive Order. The Council operates as the state's multidisciplinary policy development and recommendation board for issues relating to substance abuse. A broad cross-section of community leaders, professionals, and elected officials serve on the GCOSA. Many of these same individuals also serve on the GMCC.
- The GCOSA has spawned many of the state's important legislative and other policy initiatives to address methamphetamine abuse in Washington. Briefly, these include legislation to address the wholesale and retail sale of precursor chemicals, the development of drug-endangered children guidelines, and legislation to address problems created by mobile meth labs.
- Washington should enhance its ability to address statewide substance abuse issues by increasing its commitment to and funding of one multi-disciplinary entity like the GCOSA.
- Efforts to address and combat addiction will be more effective if there is one substance abuse policy board, not a board that limits its focus to methamphetamine abuse.
- The GCOSA is structured in such a way as to be well-situated to continue to comprehensively address substance abuse issues in Washington.
- The visibility and stability of the GCOSA will improve if it is established by state statute. Such a structure would encourage stable funding for the GCOSA. However, such a structure might also impair the flexibility of the current model.
- The GCOSA currently has a staff of only .65 FTE. This is inadequate to meet the state's needs for policy development and implementation.
- The Washington State Summit on Alcohol and Other Drug Issues (September 8 - 9, 2005) and the AG's

Operation: Allied Against Meth Task Force will both produce final reports with recommendations for future action. The GCOSA and GMCC are well-situated to study and implement recommendations from both of these endeavors.

- The Attorney General is committed to addressing problems caused by methamphetamine production and use and has demonstrated considerable leadership on this issue during his first nine months in office by committing additional resources in his office to prosecute methamphetamine crimes, by traveling throughout the state to seek out and receive input on this issue, by convening this task force, and by challenging task force members to clearly state recommendations for demand reduction, criminal sanctions, and cleanup.



**Attorney General Rob McKenna with members of the Yakima County Meth Action Team.**

**- AGO Photographer**

- Washington will benefit from a virtual center within which state and local efforts to combat meth can be publicized and coordinated. An entity in Washington, D. C. is planning such a center and may go live as early as January 2006.

## **Recommendations:**

- The AG should request appointment to the GCOSA and seek out an active leadership role on the GMCC.
- Recommend to the GCOSA that the GMCC be established as a formal committee of the GCOSA.
- Work with the Governor's office to further evaluate whether the existing GCOSA and GMCC structures provide an effective policy structure that satisfactorily and adequately meets the community's need for visible methamphetamine policy development and implementation.
- Ask the GCOSA to evaluate the benefits of establishing the GCOSA by state statute and to affirmatively recommend a course of action to the Governor that will either maintain the GCOSA's current structure or establish it under state law.
- Encourage the GMCC to review and evaluate the final recommendations of the OAAM Task Force and the Washington State Summit on Alcohol and Other Drug Issues, to implement recommendations that meet sound public policy goals and commonly accepted best practices, and to establish a timeline for action.
- Encourage the GCOSA and the GMCC to develop a Web site where information pertaining to methamphetamine demand reduction, criminal justice issues, and cleanup concerns can be posted and easily accessed.
- Pursue public/private partnership funding opportunities for the proposed virtual training center, which, as proposed, will be connected to a national network and will advance information sharing and expertise in local communities of the state.



Attorney General Rob McKenna

## Operation: Allied Against Meth

### Subcommittee On Criminal Sanctions

- **Hon. Bill Elfo (Chair)**  
Whatcom County Sheriff, Representing WASPC
- **Chris DeChant**  
Mercer Island Police Department, Representing WACOPS
- **Hon. Russ Hauge**  
Kitsap County Prosecutor, Representing WAPA
- **Annette L. Hayes**  
Assistant United States Attorney, Representing United States Attorney for Western Washington
- **Assistant Chief Dave Karnitz, (Capt. Mark Couey, Alternate)**  
Investigative Service Buearu, Washington State Patrol
- **James McDevitt**  
United States Attorney, Representing United States Attorney for Eastern Washington
- **Suzanne Moreau**  
Puget Sound Labor Agency (AFL-CIO), Representing Organized Labor
- **Jason Moulton**  
Safeway Loss Prevention Department, Representing Washington Association of Retailers/Grocers
- **Hon. Al O'Brien**  
Washington State Representative
- **Scott Sigmon**  
Schering-Plough External Affairs, Representing Pharmaceutical Industry
- **Hon. Karl Sloan**  
Okanogan County Prosecutor, Representing WAPA





## FINAL RECOMMENDATIONS OF THE SUBCOMMITTEE ON CRIMINAL SANCTIONS

### 1. Sentencing Enhancements - Findings:

In general, while the committee does not recommend increasing baseline criminal penalties across the board for all categories of drug offenses, sentencing enhancements should be increased for methamphetamine-related crimes, and these enhancements should be served consecutively, not concurrently.

#### Recommendations:

The Attorney General shall work with the Washington Association of Sheriffs and Police Chiefs and the Washington Association of Prosecuting Attorneys to draft legislative language to accomplish the following objectives:

- Require multiple drug enhancements under the state's Sentencing Reform Act of 1981, RCW 9.94A.533(6), such as protected zones and selling with a minor present, to be served consecutively or stacked, as a legislative fix to the Jacobs decision.

**Methamphetamine use is the most destructive force facing our county today. Law enforcement must be equipped to safely enter contaminated sites, child protection services must be at the ready to help children victimized by a parent's addiction and drug treatment and prevention services must be offered in each community.**

**- Whatcom County Sheriff Bill Elfo**



**Attorney General Rob McKenna with Sheriff Bill Elfo and Ferndale Police Officer David Shepard at a community meth meeting in Ferndale in November 2005**

**- AGO Photographer**

- Create a crime outside the scope of manufacturing, for possession of large quantities of precursor chemicals used in the manufacturing process.

Nationwide methamphetamine abuse has become the leading drug problem affecting local law enforcement agencies. Washington state is no different. If legislators want to help law enforcement battle this epidemic, they need to give us the tools we need to crack down on those who make and sell this drug.

- Chris DeChant, Mercer Island Police Department

- Bring meth-related anticipatory crimes for property and person offenses in line with others; i.e., make attempt and conspiracy 75 percent of standard range sentence.
- Washington does not need to match federal penalties for felony drug offenses, but in the long run, should seek parity with Oregon and Idaho to reduce the incentive for methamphetamine traffickers and cooks to move back and forth across state lines to avoid stricter sanctions in one state for limited sanctions in another.

## **2. Prison Based Treatment - Findings:**

The Legislature has made a decision to emphasize treatment over incarceration. While we believe that shorter sentences can be a disincentive to seek treatment, we do believe that prison-based treatment alternatives should be increased for all levels of drug offenders, with the exception of those convicted of weapons offenses.

### **Recommendations:**

- While the task force does not propose to eliminate earned release for Level III offenders, treatment must occur prior to release.
- Follow the federal model which allows for treatment only during the final two years of a sentence.
- In addition to making prison-based “therapeutic community” treatment available to Drug Offender Sentencing Alternative (DOSA) offenders, increase the number of treatment beds available for Level C and D drug offenders.

## **3. Drug Offender Sentencing Alternative - Findings:**

DOSA offenders who qualify for “50 percent off” for good time may end up serving as little as 25 percent of their original sentences. For example, an offender sentenced to 12 months, may only end up serving 3 months. This does not provide an adequate incentive for the offender to seek and complete treatment. Furthermore, DOSA offenders are not adequately

being supervised by DOC and there are no sanctions for failure to complete, or even start, outpatient treatment. The coercive model is the only thing that will get offenders into treatment; community supervision is just not working.

#### **Recommendations:**

- Reduce the use “50 percent off” for good time for those sentenced under DOSA to 33 percent.
- Amend the DOSA statute (RCW 9.94A.660) to tighten eligibility requirements.
- Ideally, restore the authority of superior court judges to order pre-sentencing examinations by the Department of Corrections for all felonies, and to determine that Level C and D drug offenders require community supervision. At a minimum, restore “problem severity at intake” scores (PSIs) for all drug offenders being considered for DOSA.
- DOSA must be evaluated to determine if it is working, specifically for those convicted of property crimes, i.e., actual outcomes. If it is not, resources should be moved back into prison-based treatment.

**Our legal system must support keeping meth addicts in jail long enough to receive drug treatment. If you put somebody on the street with an untreated addiction, they’re going to commit more crimes.**

**Meth use is the No. 1 problem law enforcement faces right now in Kitsap County because addicts are committing an increasing number of crimes. And the crimes are getting more violent. We started with property crimes and have ended up with assaults, domestic violence and murder.**

**- Kitsap County Prosecutor  
Russ Hauge**

#### **4. Wiretaps and Bugs - “No Party Consent” - Findings:**

Wiretaps and bugs are not legal in Washington, because Washington law does not comply with the minimum requirements of the Fourth Amendment. Further, evidence obtained by wiretaps and bugs is not admissible in Washington courts, even if it is obtained legally under federal law or the law of another state. Although wiretaps and bugs are complicated legally and costly to carry out, there are rare cases where the expense is justified. Washington law enforcement officers should have the ability to employ wiretaps and bugs where the facts of the investigation justify the expense, and legally-obtained evidence from other jurisdictions should be admissible in Washington courts.

It's only been a few months since Washington restricted the sale of pseudoephedrine and backyard meth labs in Spokane have all but dried up, but now the gangs have moved in. Where police once spent their time arresting addicts who cooked up the toxic concoction in their back yards, now we are having to confront experienced drug rings that bring violence and organized crime with them. As the method of distribution evolves, law enforcement needs the tools to evolve with it.

- US Attorney James McDevitt

#### **Recommendations:**

- Amend Washington's privacy laws (RCW 9.73.090(2) and (4), RCW 9.73.120, RCW 9.73.130, and RCW 9.73.140) to apply to no-party consent and comply with minimum Fourth Amendment standards.
- Repeal RCW 9.73.050, dealing with admissibility of intercepted communication in evidence.

#### **5. "One Party Consent" - Findings:**

The US Supreme Court has held that (unlike "no party consent" wiretaps and bugs) one-party consent interceptions, transmissions, and recordings are not covered by the Fourth Amendment protections against unlawful search and seizure. Similarly, the Washington Supreme Court has held that "one-party consent" is not covered by Art. 1, Sec. 7, of the Washington State Constitution dealing with privacy.

Requiring probable cause to use "one-party consent" prevents police from recording the early conversations in a criminal transaction that often are the most critical to an accurate determination of guilt or innocence, and prevents police from protecting a citizen or undercover officer who is in a dangerous situation in many of these conversations. Because federal authorities do not have to show probable cause to intercept, transmit and record with the consent of one party to a conversation, (1) legally made federal recordings are not admissible in state prosecutions, even if they pertain to crimes not even under investigation by federal authorities; and (2) the state law is a major impediment in the operation of federal-local task forces.

#### **Recommendations:**

- Remove the probable cause and judicial review requirements from RCW 9.73.230, dealing with one-party consent.
- Amend RCW 9.73.230(1) (b) to provide that RCW 9.73.230 applies to all criminal investigations.

- Amend RCW 9.73.230(5) to provide that authorizations under RCW 9.73.230 are valid for 30 days.
- Amend RCW 9.73.230(8) to provide that evidence obtained under RCW 9.73.230 or legally in another jurisdiction under the laws of that jurisdiction is admissible in all proceedings in Washington, or repeal the subsection entirely.

## **6. Law Enforcement Search Warrant and Subpoena Power - Findings:**

Washington law enforcement officers investigating all kinds of cases including drug cases need to obtain business records from third parties located both in and outside Washington. Search warrants are required for some records, such as ISP (Internet Service Provider) records needed to trace the source of threatening or otherwise criminal e-mails; others may be obtained with subpoenas. Some judges think that Washington search warrants are not effective outside Washington, and therefore refuse to issue such a warrant despite a showing of probable cause.

**When dealing with drug offenses, I feel there should be more treatment alternatives available to deal with individuals who are addicted to drugs and who commit crimes of straight possession or dealing in very small amounts to support their addiction.**

**The changes to the sentencing laws did little to increase the availability or funding of these options, and without taking some action to remove the addiction that is the underlying motive for these crimes, the chances of reducing the level of these crimes are limited.**

**- Okanogan County Prosecutor  
Karl Sloan**

## **Recommendations:**

- Enact a statute along the lines of those enacted in California, Florida, and Minnesota requiring out-of-state business to respond to Washington search warrants and subpoenas issued in criminal matters, and requiring Washington businesses to respond to search warrants and subpoenas from other states.
- Authorize the police to issue subpoenas to third parties for business records.

## **7. Northern Tier Border State Security and Interdiction - Findings:**

The flow of both organic and synthetic drugs, as well as precursor chemicals, weapons and cash across the Canadian border is a homeland security problem. Nonetheless, huge disparities exist between the amount of federal resources deployed at the Mexican and Canadian borders for narcotics interdiction and prosecution. The result is that local law enforcement agencies and prosecutors are taking on 80 to 85 percent of what should literally be “federal



I've appreciated the chance to meet with people around Washington state -- police officers, prosecutors, former meth addicts -- who care about winning the fight against meth. We have to keep working together until the scourge of meth is stomped out.

- Rep. Al O'Brien, D-Mountlake Terrace, Chair of the House Criminal Justice and Corrections Committee

cases.” In addition, any successful interdiction strategy will not only involve resources, but the coordinated deployment of those resources across state lines. Drug traffickers do not respect international or state boundaries, and we need a regional strategy to coordinate our law enforcement response across these same boundaries.

### **Recommendations:**

- Support legislation in the Congress to reimburse border counties for the cost of prosecuting defendants, when arrests are initiated by federal agents, as currently provided for in law for Southern border.
- The Attorney General should form a coalition with other Northern Tier Border State attorneys general to secure passage of this legislation in the next session, and to advocate on behalf of additional border security agents.
- Additional federal funding cannot be achieved without an accurate, fact-based threat assessment. The Attorney General should join the existing state Clandestine Lab Working Group, and work with the state crime lab to promote 100 percent reporting of methamphetamine lab-related incidents by state and local law enforcement agencies.
- The Attorney General should invite his colleagues from Idaho and Oregon, as well federal, state and local law enforcement agencies in all three states, to create a regional chapter of the National Methamphetamine Chemicals Initiative. The purpose of the NMCI is to prevent the diversion of legitimate precursor chemicals for illegal use, but also to promote regional interdiction strategies, scientific decontamination standards and the adoption of drug-endangered children guidelines.

### **8. Funding for Drug Task Forces - Findings:**

If current proposals to eliminate Byrne Grant funding and reduce support for the Office of National Drug Control Policy's High Intensity Drug Trafficking Area program are enacted, many of

the local and multi-jurisdictional drug task forces in our state will be in danger of elimination. Furthermore, several drug task forces have ceased to exist with the beginning of the new state fiscal year, increasing the number of counties that are not served by a task force at all. We need an integrated funding plan and interdiction strategy to go after both clandestine labs and trafficking organizations in all corners of the state.



**Attorney General Rob McKenna with Ferndale Police Officer David Shepard at a community meth meeting in Ferndale in November 2005.**

**- AGO Photographer**

### **Recommendations:**

- Support Congressional appropriation to restore funding for drug task forces to 2004 levels and adjust criteria to reemphasize methamphetamine eradication.
- Develop proposals to ensure ongoing direct state support for drug task forces, as well as local prosecutors and law enforcement agencies not served by a task force. The Attorney General shall work with the Washington Association of Sheriffs and Police Chiefs and the Washington Association of Prosecuting Attorneys in developing specific funding formulae and recommendations. The following proposals should be considered, at a minimum:

**Methamphetamine users frequently steal to support their habit. Stores are seeing an increase in organized retail theft rings that endanger employees and customers.**

**- Jason Moulton, Safeway Loss Prevention Department**

- a. Maintain funding for local and Washington State Patrol task force funding at the level of \$3 million, if JAG support is cut.
  - b. Increase drug task force funding by 25 percent, perhaps to greater assist rural counties by an additional \$750,000.
  - c. Consider rolling back the 2003 budget cut to the Washington State Patrol's Drug Enforcement/Meth Resource Center, by restoring \$300,000 in funding.
  - d. Roll back prior budget cuts to the Drug Prosecution Assistance Program, due to the reduction of BYRNE/JAG resources, by restoring \$300,000 in funding.
- Review existing criteria for distributing federal law enforcement funds statewide and propose changes, as necessary, to these criteria, to ensure both proper performance standards and adequate geographic coverage.
  - A successor body to this task force, including representation by the Office of the Governor, Office of the Attorney General, the Washington State Patrol, WAPA, WASPC, WACOPS and other stakeholders, should propose a new integrated strategy for narcotics interdiction statewide. This could include developing an inventory of key transportation corridors used in drug trafficking statewide, and a strategy to combine federal, state and local resources in conducting interdiction in these corridors.

## **9. PSE Products Log - Findings:**

Pseudoephedrine or pure ephedrine is the precursor chemical used by the vast majority of methamphetamine cooks in Washington. Other methods of manufacture, without using pseudoephedrine or pure ephedrine as the precursor chemical, are a statistically insignificant number of Washington lab sites. Proposed WAC 246-889-070 would require retail transaction logs for ephedrine,

pseudoephedrine, and phenylpropanolamine products, in all retail outlets or pharmacies where such products are sold, and it would also require all such products be placed behind a counter or glass case. In addition, sales would be limited to 9 grams or two “blister paks” over a 24-hour period, and to those over the age of 18 possessing valid identification. Placing single and multiple-ingredient PSE products behind the counter, requiring customers to show valid identification and requiring them to provide identifying information to be recorded on a log, will help prevent the diversion of legitimate pharmaceutical products for illegal use. However, a paper log could be cumbersome to implement on a retail level, could be difficult to store and access during criminal investigations, and could contribute to identity theft. The current proposed log information would take three to four minutes per transaction to be legibly recorded. The data from the log would need to be reentered in order to sort the information for law enforcement. In addition, it is unclear whether or not federal law enforcement will have the authority to access to the logs as the draft rule is currently written.

**Schering-Plough is committed to helping in the fight against meth, while at the same time working to ensure that law-abiding consumers have access to the safe and effective over-the-counter medications they have come to rely on. We appreciate the cooperative effort of this task force to crack down on those who abuse meth.**

**- Scott Sigmon, Schering-Plough External Affairs**

### **Recommendations:**

- Advocate for implementation of a Web-based PSE products log pilot program. This would require the deletion of the requirement to obtain the signature of the purchaser from the proposed WAC 246-889. Ideally, the technology tested would enable retailers to utilize their existing computer and point of sale systems to record the required data, store it and upload it to a secure law enforcement data base.
- Evaluate the appropriateness of using the barcode feature of the new Washington State Drivers License as a component of any electronic, point of sale or Web-based product log regime.
- Expand the definition of law enforcement under RCW 69.43 to include federal law enforcement agencies.

## Acknowledgments

The “*Operation: Allied Against Meth*” Task Force would like to thank the following agencies and organizations for their contributions to this report.

The National Alliance of Model State Drug Laws  
The National Methamphetamine Chemicals Initiative  
The Office of National Drug Control Policy  
Washington State Crime Laboratory, Washington State Patrol  
Washington State Department of Health, Environmental Health Division  
Washington State Department of Community, Trade and Economic Development  
Office of the Superintendent of Public Instruction  
Washington State Senate Committee Services  
Washington State House of Representatives Office of Program Research  
Office of the King County Prosecuting Attorney  
Office of the Snohomish County Prosecuting Attorney  
Whatcom County Sheriff’s Office  
Washington Association of Sheriffs and Police Chiefs  
Washington Association of Prosecuting Attorneys  
Washington Council of Sheriffs and Police Chiefs  
Washington State Methamphetamine Initiative  
Comprehensive Health Education Foundation

The Task Force would also like to acknowledge the following employees within the Office of the Attorney General, without whose efforts, this report would not have been possible.

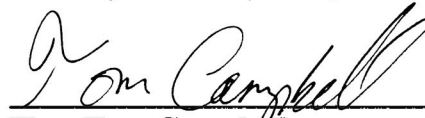
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Milt Doumit, Chief of Staff  
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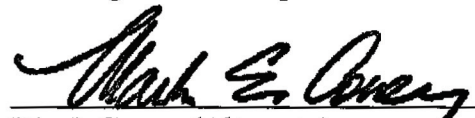
We the undersigned members of the "Operation: Allied Against Meth" Task Force hereby adopt these final recommendations on this 9th day of November 2005, provided that legislative members withhold their acquiescence on specific and certain other recommendations, particularly with respect to constitutional privacy issues.



**Hon. Rob McKenna**  
Attorney General (Chair)



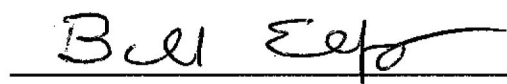
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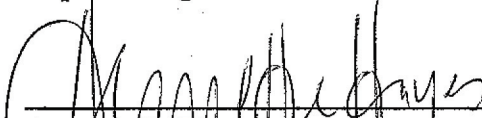
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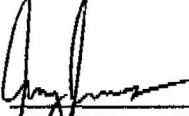
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Washington State Senator



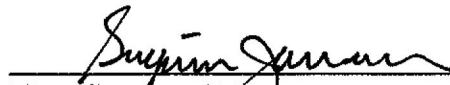
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Washington State Senator

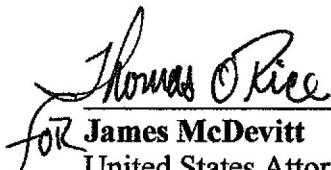


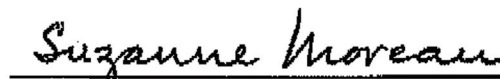
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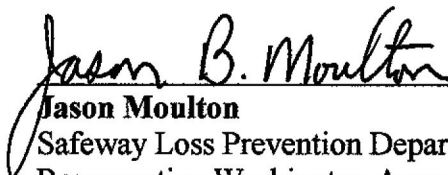


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**for James McDevitt**  
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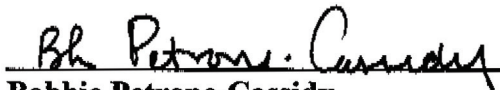
  
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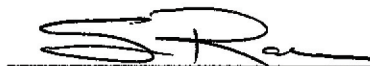
  
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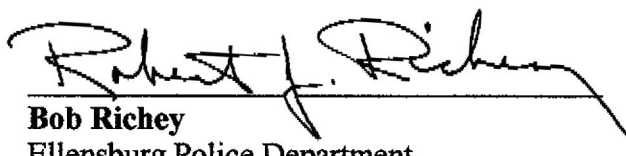
  
**Hon. Al O'Brien**  
Washington State Representative

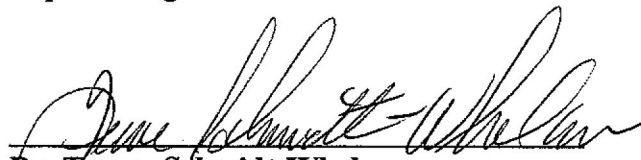
  
**Hon. Brad Owen**  
Lt. Governor

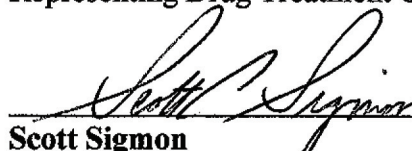
  
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Washington State Representative

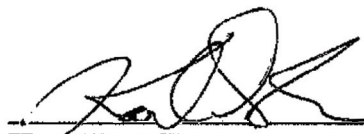
  
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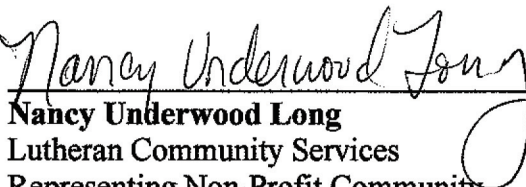
  
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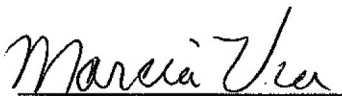
  
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**Scott Sigmon**  
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**Nancy Underwood Long**  
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Representing Non-Profit Community

  
**Marcia Via**  
Greater Spokane Substance Abuse Council  
Representing Community Mobilization

## **Appendix A**

### **To Cleanup and Governance Recommendations**

Chapter 64.44 RCW  
Contaminated properties

Chapter Listing

RCW Sections

64.44.005 Legislative finding.  
64.44.010 Definitions.  
64.44.020 Reporting -- Warning -- Notice -- Duties of local health officer.  
64.44.030 Unfit for use -- Order -- Notice -- Hearing.  
64.44.040 City or county options.  
64.44.050 Decontamination by owner -- Requirements.  
64.44.060 Certification of contractors -- Denial, suspension, or revocation of certificate -- Duties of department of health -- Decontamination account.  
64.44.070 Rules and standards -- Authority to develop.  
64.44.080 Civil liability -- Immunity.  
64.44.900 Application -- Other remedies.  
64.44.901 Severability -- 1990 c 213.

64.44.005

Legislative finding.

The legislature finds that some properties are being contaminated by hazardous chemicals used in unsafe or illegal ways in the manufacture of illegal drugs. Innocent members of the public may be harmed by the residue left by these chemicals when the properties are subsequently rented or sold without having been decontaminated.

[1990 c 213 § 1.]

64.44.010

Definitions.

The words and phrases defined in this section shall have the following meanings when used in this chapter unless the context clearly indicates otherwise.

(1) “Authorized contractor” means a person who decontaminates, demolishes, or disposes of contaminated property as required by this chapter who is certified by the department as provided for in RCW 64.44.060.

(2) “Contaminated” or “contamination” means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term

hazards. Property that at one time was contaminated but has been satisfactorily decontaminated according to procedures established by the state board of health is not “contaminated.”

(3) “Hazardous chemicals” means the following substances used in the manufacture of illegal drugs: (a) Hazardous substances as defined in RCW 70.105D.020, and (b) precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the state board of pharmacy, has determined present an immediate or long-term health hazard to humans.

(4) “Officer” means a local health officer authorized under chapters 70.05, 70.08, and 70.46 RCW.

(5) “Property” means any property, site, structure, or part of a structure which is involved in the unauthorized manufacture or storage of hazardous chemicals. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings, boats, motor vehicles, trailers, manufactured housing, or any shop, booth, or garden.

[1999 c 292 § 2; 1990 c 213 § 2.]

Notes: Finding -- Intent -- 1999 c 292: “The legislature finds that the contamination of properties used for illegal drug manufacturing poses a threat to public health. The toxic chemicals left behind by the illegal drug manufacturing must be cleaned up to prevent harm to subsequent occupants of the properties. It is the intent of the legislature that properties are decontaminated in a manner that is efficient, prompt, and that makes them safe to reoccupy.” [1999 c 292 § 1.]

Effective date -- 1990 c 213 §§ 2, 12: “Sections 2 and 12 of this act are necessary for the immediate preservation of the public peace, health, or safety or support of the state government and its public institutions, and shall take effect on the effective date of the 1989-91 supplemental omnibus appropriations act (SSB 6407) [April 23, 1990] if specific funding for this act is provided therein.” [1990 c 213 § 17.]

64.44.020

Reporting - Warning - Notice - Duties of local health officer.

Whenever a law enforcement agency becomes aware that property has been contaminated by hazardous chemicals, that agency shall report the contamination to the local health officer. The local health officer shall post a written warning on the premises within one working day of notification of the contamination and shall inspect the property within fourteen days after receiving the notice of contamination. The warning shall inform the potential occupants that hazardous chemicals may exist on, or have been removed from, the

premises and that entry is unsafe. If a property owner believes that a tenant has contaminated property that was being leased or rented, and the property is vacated or abandoned, then the property owner shall contact the local health officer about the possible contamination. Local health officers or boards may charge property owners reasonable fees for inspections of suspected contaminated property requested by property owners.

A local health officer may enter, inspect, and survey at reasonable times any properties for which there are reasonable grounds to believe that the property has become contaminated. If the property is contaminated, the local health officer shall post a written notice declaring that the officer intends to issue an order prohibiting use of the property as long as the property is contaminated.

Local health officers must report all cases of contaminated property to the state department of health. The department may make the list of contaminated properties available to health associations, landlord and realtor organizations, prosecutors, and other interested groups. The department shall promptly update the list of contaminated properties to remove those which have been decontaminated according to provisions of this chapter.

The local health officer may determine when the services of an authorized contractor are necessary.

[1999 c 292 § 3; 1990 c 213 § 3.]

Notes: Finding -- Intent -- 1999 c 292: See note following RCW 64.44.010.

64.44.030

Unfit for use - Order - Notice - Hearing.

If after the inspection of the property, the local health officer finds that it is contaminated, then the property shall be found unfit for use. The local health officer shall cause to be served an order prohibiting use either personally or by certified mail, with return receipt requested, upon all occupants and persons having any interest therein as shown upon the records of the auditor's office of the county in which such property is located. The local health officer shall also post the order prohibiting use in a conspicuous place on the property. If the whereabouts of such persons is unknown and the same cannot be ascertained by the local health officer in the exercise of reasonable diligence, and the health officer makes an affidavit to that effect, then the serving of the order upon such persons may be made either by personal service or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, to each person at the address appearing on the last equalized tax assessment roll of the county where the property is located or at the address known to the county assessor, and the order shall be posted conspicuously at the residence. A copy of the order shall also be mailed, addressed to each person or party having a recorded right, title, estate, lien, or interest in the property. The order shall contain a notice that a hearing before

the local health board or officer shall be held upon the request of a person required to be notified of the order under this section. The request for a hearing must be made within ten days of serving the order. The hearing shall then be held within not less than twenty days nor more than thirty days after the serving of the order. The officer shall prohibit use as long as the property is found to be contaminated. A copy of the order shall also be filed with the auditor of the county in which the property is located, and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law. In any hearing concerning whether property is fit for use, the property owner has the burden of showing that the property is decontaminated or fit for use. The owner or any person having an interest in the property may file an appeal on any order issued by the local health board or officer within thirty days from the date of service of the order with the appeals commission established pursuant to RCW 35.80.030. All proceedings before the appeals commission, including any subsequent appeals to superior court, shall be governed by the procedures established in chapter 35.80 RCW.

[1999 c 292 § 4; 1990 c 213 § 4.]

Notes: Finding -- Intent -- 1999 c 292: See note following RCW 64.44.010.

#### 64.44.040

City or county options.

The city or county in which the contaminated property is located may take action to condemn or demolish property or to require the property be vacated or the contents removed from the property. The city or county may use an authorized contractor if property is demolished, decontaminated, or removed under this section. No city or county may condemn or demolish property pursuant to this section until all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted.

[1999 c 292 § 5; 1990 c 213 § 5.]

Notes: Finding -- Intent -- 1999 c 292: See note following RCW 64.44.010.

#### 64.44.050

Decontamination by owner - Requirements.

An owner of contaminated property who desires to have the property decontaminated shall use the services of an authorized contractor unless otherwise authorized by the local health officer. The contractor shall prepare and submit a written work plan for decontamination to the local health officer. The local health officer may charge a reasonable fee for review of the work plan. If the work plan is approved and the decontamination is completed and the property is retested according to the plan and properly documented, then the health officer

shall allow reuse of the property. A release for reuse document shall be recorded in the real property records indicating the property has been decontaminated in accordance with rules of the state department of health.

[1999 c 292 § 6; 1990 c 213 § 6.]

Notes: Finding -- Intent -- 1999 c 292: See note following RCW 64.44.010.

#### 64.44.060

Certification of contractors - Denial, suspension, or revocation of certificate - Duties of department of health - Decontamination account.

(1) A contractor may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health. The department shall establish performance standards for contractors by rule in accordance with chapter 34.05 RCW, the administrative procedure act. The department shall train and test, or may approve courses to train and test, contractors and their employees on the essential elements in assessing property used as an illegal drug manufacturing or storage site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment, methods for proper decontamination, demolition, removal, and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, the contractor or employee shall be certified.

(2) The department may require the successful completion of annual refresher courses provided or approved by the department for the continued certification of the contractor or employee.

(3) The department shall provide for reciprocal certification of any individual trained to engage in decontamination, demolition, or disposal work in another state when the prior training is shown to be substantially similar to the training required by the department. The department may require such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, or revoke a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to this chapter. A certificate may be denied, suspended, or revoked on any of the following grounds:

(a) Failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel;



- (b) Failing to file a work plan;
  - (c) Failing to perform work pursuant to the work plan;
  - (d) Failing to perform work that meets the requirements of the department;
  - (e) The certificate was obtained by error, misrepresentation, or fraud; or
  - (f) If the person has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.
- (5) A contractor who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation.
- (6) The department of health shall prescribe fees as provided for in RCW 43.70.250 for the issuance and renewal of certificates, the administration of examinations, and for the review of training courses.
- (7) The decontamination account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in this account. Moneys in the account may only be spent after appropriation for costs incurred by the department in the administration and enforcement of this chapter.

[1999 c 292 § 7; 1997 c 58 § 878; 1990 c 213 § 7.]

Notes: \*Reviser's note: 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Finding -- Intent -- 1999 c 292: See note following RCW 64.44.010.

Short title -- Part headings, captions, table of contents not law -- Exemptions and waivers from federal law -- Conflict with federal requirements -- Severability -- 1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates -- Intent -- 1997 c 58: See notes following RCW 74.20A.320.

#### 64.44.070

Rules and standards - Authority to develop.

(1) The state board of health shall promulgate rules and standards for carrying out the provisions in this chapter in accordance with chapter 34.05 RCW, the administrative procedure act. The local board of health and the local health officer are authorized to exercise such powers as may be necessary to carry out this chapter. The department shall provide technical assistance to local health boards and health officers to carry out their duties under this chapter.

(2) The department shall adopt rules for decontamination of a property used as an illegal drug laboratory and methods for the testing of ground water, surface water, soil, and septic tanks for contamination. The rules shall establish decontamination standards for hazardous chemicals, including but not limited to methamphetamine, lead, mercury, and total volatile organic compounds.

[1999 c 292 § 8; 1990 c 213 § 9.]

Notes: Finding -- Intent -- 1999 c 292: See note following RCW 64.44.010.

#### 64.44.080

Civil liability - Immunity.

Members of the state board of health and local boards of health, local health officers, and employees of the department of health and local health departments are immune from civil liability arising out of the performance of their duties under this chapter, unless such performance constitutes gross negligence or intentional misconduct.

[1990 c 213 § 10.]

#### 64.44.900

Application - Other remedies.

This chapter shall not limit state or local government authority to act under any other statute, including chapter 35.80 or 7.48 RCW.

[1990 c 213 § 11.]

#### 64.44.901

Severability - 1990 c 213.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1990 c 213 § 14.]



## **Appendix B**

### **To Cleanup and Governance Recommendations**

Chapter 246-205 WAC

Decontamination of illegal drug manufacturing or storage sites Last Update: 6/18/03

WAC Sections

246-205-001 Purpose and authority.

246-205-010 Definitions.

#### **DECONTAMINATION CONTRACTOR CERTIFICATION**

246-205-021 Training provider certification.

246-205-031 Basic training course content.

246-205-041 Refresher training course.

246-205-051 Certified training provider responsibilities.

246-205-061 Training provider certification renewal.

246-205-071 Worker and supervisor certification.

246-205-081 Worker and supervisor certification renewal.

246-205-091 Contractor certification.

246-205-101 Reciprocity.

246-205-111 Performance standards.

246-205-121 Denial, suspension, revocation of certification, and civil penalties.

246-205-131 Certified contractor list.

#### **LOCAL HEALTH OFFICER RESPONSIBILITIES**

246-205-510 Local health officer responsibilities.

246-205-520 Posting property.

246-205-530 Inspecting property.

246-205-531 Sampling procedures.

246-205-540 Determining contamination.

246-205-541 Decontamination standards.

246-205-550 Reporting contaminated property.

246-205-560 Notification of contaminated property.

246-205-570 Decontamination.

246-205-580 Verifying decontamination.

246-205-590 Recording decontamination.

246-205-990 Fees.

#### **DISPOSITIONS OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

246-205-020 Authorized contractor services. [Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-020, filed 1/24/91, effective 4/1/91.] Repealed by 03-02-022, filed 12/23/02, effective 1/23/03. Statutory Authority:

RCW 64.44.070.

246-205-030 Courses for training workers and supervisors. [Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-030, filed 1/24/91, effective 4/1/91.] Repealed by 03-02-022, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.44.070.

246-205-040 Training course approval. [Statutory Authority: RCW 64.44.060 and 64.44.070. 92-02-017 (Order 223SB), § 246-205-040, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-040, filed 1/24/91, effective 4/1/91.] Repealed by 03-02-022, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.44.070.

246-205-050 Worker and supervisor certification. [Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-050, filed 1/24/91, effective 4/1/91.] Repealed by 03-02-022, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.44.070.

246-205-060 Worker and supervisor certificate renewal. [Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-060, filed 1/24/91, effective 4/1/91.] Repealed by 03-02-022, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.44.070.

246-205-070 Authorized contractor certification. [Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-070, filed 1/24/91, effective 4/1/91.] Repealed by 03-02-022, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.44.070.

246-205-080 Reciprocity. [Statutory Authority: RCW 64.44.060 and 64.44.070. 92-02-017 (Order 223SB), § 246-205-080, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-080, filed 1/24/91, effective 4/1/91.] Repealed by 03-02-022, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.44.070.

246-205-090 On-site supervision. [Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-090, filed 1/24/91, effective 4/1/91.] Repealed by 03-02-022, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.44.070.

246-205-100 Performance standards. [Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-100, filed 1/24/91, effective 4/1/91.] Repealed by 03-02-022, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.44.070.

246-205-110 Denial, suspension, revocation of certification, and civil penalties. [Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-110, filed 1/24/91, effective 4/1/91.] Repealed by 03-02-022, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.44.070.

246-205-120 Authorized contractor certification list. [Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-120, filed 1/24/91, effective 4/1/91.] Repealed by 03-02-022, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.44.070.

246-205-001

Purpose and authority.

(1) This chapter is adopted to protect the public's health, safety, and welfare by establishing standards, procedures, and responsibilities for:

(a) The certification of contractors and their employees authorized to perform decontamination of illegal drug manufacturing or storage sites; and

(b) Regulating the occupancy and use of property where hazardous chemicals or chemical residues commonly associated with the manufacture of illegal drugs are or may be present.

(2) The statutory authority for the adoption of this chapter is chapter 64.44 RCW.

(a) Contractor certification rules are jointly adopted by the state board of health and the department of health; and

(b) Rules in this chapter pertaining to local health officers' responsibilities are adopted by the state board of health.

(3) This chapter does not apply to industrial sites where a person's manufacturing process uses a hazardous chemical when licensed or regulated by state or federal agencies.

[Statutory Authority: RCW 64.40.070 [64.44.070] and chapter 64.44 RCW. 92-10-027 (Order 268B), § 246-205-001, filed 4/29/92, effective 5/30/92. Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-001, filed 1/24/91, effective 4/1/91.]

246-205-010

Definitions.

For the purposes of this chapter, the following words and phrases shall have the following meanings unless the content clearly indicates otherwise.

“Authorized contractor” means any person or persons:

- Registered under chapter 18.27 RCW; and
- Certified by the department to decontaminate, demolish, or dispose of contaminated property as required by chapter 64.44 RCW and this chapter.



“Basic course” means a training course which has been sponsored or approved by the department for workers and supervisors who perform or supervise decontamination on illegal drug manufacturing or storage sites.

“Certificate” means a department issued written approval under this chapter.

“Certified” means a person who has department issued written approval under this chapter.

“Contaminated” or “contamination” means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated, but has been satisfactorily decontaminated according to procedures established by the state board of health is not “contaminated.”

“Decontamination” means the process of reducing levels of known contaminants to the lowest practical level using currently available methods and processes.

“Department” means the Washington state department of health.

“Disposal of contaminated property” means the disposition of contaminated property under the provisions of chapter 70.105 RCW.

“Hazardous chemicals” means the following substances used in the manufacture of illegal drugs:

- Hazardous substances as defined in RCW 70.105D.020; and
- Precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the state board of pharmacy, has determined present an immediate or long-term health hazard to humans.

“Illegal drug manufacturing or storage site” means any property where a person illegally manufactures or stores a controlled substance or a law enforcement agency or the property owner believes a person illegally manufactured or stored a controlled substance.

“Initial site assessment” means the first evaluation of a property to determine the nature and extent of observable damage and contamination.

“List of contaminated properties” means a list of properties contaminated by illegal drug manufacturing or the storage of hazardous chemicals.

“Local department” means the jurisdictional local health department or district.

“Local health officer” means a health officer or authorized representative as defined under chapters 70.05, 70.08, and 70.46 RCW.

“Person” means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or other entity.

“Posting” means attaching a written or printed announcement conspicuously on property which may be, or is determined to be, contaminated by illegal drug manufacturing or the storage of a hazardous chemical.

“Property” means any site, lot, parcel of land, structure, or part of a structure involved in the illegal manufacture of a drug or storage of a hazardous chemical including, but not limited to:

- Single-family residences;
- Units or multiplexes;
- Condominiums;
- Apartment buildings;
- Motels and hotels;
- Boats;
- Motor vehicles;
- Trailers;
- Manufactured housing;
- Any ship, booth, or garden; or
- Any site, lot, parcel of land, structure, or part of a structure that may be contaminated by previous use.

“Property owner” means a person with a lawful right of possession of the property by reason of obtaining it by purchase, exchange, gift, lease, inheritance, or legal action.

“Refresher course” means a department sponsored or approved biennial training course for decontamination workers and supervisors. An approved refresher course:

- Reviews the subjects taught in the initial training course; and
- Includes updated information on emerging decontamination technology.

“Storage site” means any property used for the storage of hazardous chemicals or illegally manufactured controlled substances.

“Supervisor” means a person certified by the department and employed by an authorized contractor who is on site during the decontamination of an illegal drug manufacturing or storage site and who is responsible for the activities performed.

“Worker” means a person certified by the department and employed by an authorized contractor who performs decontamination of an illegal drug manufacturing or storage site.

“Warning” means a sign posted by the local health officer conspicuously on the site of an illegal drug manufacturing or storage site informing potential occupants that hazardous chemicals may exist on, or have been removed from, the premises and that entry is unsafe.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-010, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.40.070 [64.44.070] and chapter 64.44 RCW. 92-10-027 (Order 268B), § 246-205-010, filed 4/29/92, effective 5/30/92. Statutory Authority: RCW 64.44.060 and 64.44.070. 92-02-017 (Order 223SB), § 246-205-010, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-010, filed 1/24/91, effective 4/1/91.]

#### 246-205-021

##### Training provider certification.

(1) Persons wanting to become an illegal drug lab decontamination training provider must obtain department approval of instructors and courses. The types of drug lab decontamination courses that may be approved by the department are:

- (a) Basic worker;
- (b) Basic supervisor; and
- (c) Refresher worker and supervisor.

(2) To obtain approval of instructors, the applicant must demonstrate that the person has the breadth of knowledge and experience necessary to properly train workers

and supervisors.

(3) To obtain approval of course work, the applicant must demonstrate the:

- (a) Adequacy and accuracy of content; and
- (b) Adequacy of training techniques.

(4) Applicants for training provider certification shall:

- (a) Submit a completed training provider application as specified under subsection (5) of this section;
- (b) Submit the required fee as specified under WAC 246-205-990; and
- (c) Ensure the department receives the application sixty or more days before the requested approval date.

(5) A training provider application includes, but is not limited to:

- (a) A completed training provider application form provided by the department;
- (b) A list of all personnel involved in course presentation and a description of their qualifications;
- (c) A detailed description of course content and the amount of time allotted to each major topic;
- (d) A description of teaching methods;
- (e) A list of questions for development of an examination; and
- (f) Copies of all materials proposed for use, when requested from the department.

(6) Training provider certification is valid for two years from the date of issuance.

(7) Training provider certification may be terminated if the training provider fails to:

- (a) Maintain the course content and quality as approved by the department; and

(b) Make changes to a course as required by the department.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-021, filed 12/23/02, effective 1/23/03.]

246-205-031

Basic training course content.

Department approved basic worker and supervisor training courses shall provide at a minimum:

(1) Information on state and federal laws, rules, and regulations applicable to illegal drug manufacturing or storage sites including, but not limited to, Contaminated properties, chapter 64.44 RCW; Precursor drugs, chapter 69.43 RCW; Uniform Controlled Substances Act, chapter 69.50 RCW; Washington Industrial Safety and Health Act, chapter 49.17 RCW; the Federal Occupational Health and Safety Act, 29 U.S.C. 651 et seq.; and this chapter.

(2) Chemical terminology, classifications, and properties related to illegal drug manufacturing.

(3) Illegal drug laboratory characteristics.

(4) First aid.

(5) Adverse health effects of exposure related to illegal drug manufacturing including, but not limited to:

(a) Toxicology; and

(b) Symptomology.

(6) Incompatibility of chemicals related to decontamination.

(7) Techniques and equipment used for decontamination of property.

(8) Handling unknown substances.

(9) State and federal requirements for dealing with hazardous materials including, but not limited to, chapter 173-303 WAC related to:

(a) Disposal;

(b) Transportation;

(c) Storage; and

(d) Reporting.

(10) Training for supervisors must also include, but not be limited to:

(a) Obtaining necessary information for making site assessments;

(b) Initial site assessment;

(c) Initial site sampling;

(d) Work plan development;

(e) Final site sampling;

(f) Report completion; and

(g) Penalties and liabilities.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-031, filed 12/23/02, effective 1/23/03.]

246-205-041

Refresher training course.

(1) A refresher training course is required every two years for workers and supervisors.

(2) Department approved refresher worker and supervisor training courses shall provide at a minimum:

(a) A thorough review of the subjects required under WAC 246-205-031;

(b) An update of information on state-of-the-art procedures and equipment;

(c) A review of regulatory changes and interpretation; and

(d) Other subjects if required by the department to update information on new technology and procedures.



[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-041, filed 12/23/02, effective 1/23/03.]

246-205-051

Certified training provider responsibilities.

(1) Prior to any training, the training provider shall:

- (a) Notify the department in writing thirty or more days before training is scheduled to begin. The notification shall include the date, time, and address of the location where training will be conducted;
- (b) Ensure that the size of the class is appropriate for learning the course content;
- (c) Incorporate into training any required subject matter developed by the department;
- (d) Obtain department approval in advance of any changes to the training; and
- (e) Maintain the course content and quality as approved by the department.

(2) When requested by the department, the training provider shall confirm successful completion of CDL worker or supervisor training courses by applicants seeking CDL worker or supervisor certification.

(3) At the department's request, the training provider shall allow a department representative to attend a training course as an observer to verify that the training provider conducts the training in accordance with the training approved by the department.

(4) Training providers conducting training outside the state of Washington shall:

- (a) Reimburse the department at current state of Washington per diem and travel allowance rates for travel expenses associated with department observance of the training courses; and
- (b) Submit reimbursement to the department within thirty days of receipt of the billing notice.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-051, filed 12/23/02, effective 1/23/03.]

246-205-061

Training provider certification renewal.

Training providers seeking renewal certification shall submit the following to the department thirty or more days before expiration of the current certificate:

- (1) A completed training provider application as described in WAC 246-205-021(5); and
- (2) A fee as prescribed in WAC 246-205-990.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-061, filed 12/23/02, effective 1/23/03.]

246-205-071

Worker and supervisor certification.

(1) Applicants seeking certification as a decontamination worker shall ensure the department receives the following within sixty days of completing the basic worker course:

- (a) A completed decontamination worker application;
- (b) A fee as prescribed in WAC 246-205-990;
- (c) Evidence of satisfying the requirements of WAC 296-62-30410;
- (d) Evidence of successful completion of a department sponsored or approved basic decontamination worker course; and
- (e) Evidence of passing the basic decontamination worker examination administered by the department with a score of seventy percent or higher.

(2) Applicants seeking certification as a decontamination supervisor shall ensure the department receives the following within sixty days of completing the basic supervisor course:

- (a) A completed decontamination supervisor application;
- (b) A fee as prescribed in WAC 246-205-990;
- (c) Evidence of a valid Washington state decontamination worker certificate;
- (d) Evidence of forty or more hours of on-site experience in hazardous material

or illegal drug manufacturing or storage site decontamination projects;

(e) Evidence of satisfying the requirements of WAC 296-62-30415.

(f) Evidence of successful completion of a department sponsored or approved basic decontamination supervisor course; and

(g) Evidence of passing the basic decontamination supervisor examination administered by the department with a score of seventy percent or higher.

(3) Applicants for decontamination supervisor certification who can demonstrate that their work experience and training has resulted in experience and training equivalent to the requirements in WAC 246-205-031 and 246-205-071 (1)(c) and (2)(c), (d), and (e) may be certified as a CDL supervisor when they apply prior to May 1, 2003.

(a) For purposes of this subsection, an application includes:

(i) A completed decontamination supervisor application form;

(ii) A fee as prescribed in WAC 246-205-990; and

(iii) Evidence of meeting the requirements of this subsection.

(b) All other decontamination supervisor certification requirements of this chapter apply.

(4) Worker and supervisor certificates are valid for two years from the date of issuance.

(5) Workers and supervisors shall make certificates available for inspection at all times during an illegal drug manufacturing or storage site decontamination project.

(6) The certificate may be denied, suspended, or revoked as described in WAC 246-205-121.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-071, filed 12/23/02, effective 1/23/03.]

246-205-081

Worker and supervisor certification renewal.

(1) Worker and supervisor certification is valid for two years from the date of issuance.

(2) Certified workers and supervisors seeking certificate renewal shall submit to the department thirty or more days before expiration of the current certificate:

(a) A completed application form for certificate renewal;

(b) A fee prescribed in WAC 246-205-990; and

(c) Evidence of successful completion of a department sponsored or approved refresher training course.

(3) If a previously certified worker applies for certification following expiration of the previous certificate, but less than two years after expiration of the previous certificate, the worker shall:

(a) Submit to the department a completed application form for certificate renewal;

(b) Submit to the department a fee prescribed in WAC 246-205-990; and

(c) Retake the entire basic worker course.

(4) If a previously certified supervisor applies for certification following expiration of the previous certificate, but less than two years after expiration of the previous certificate, the supervisor shall:

(a) Submit to the department a completed application form for certificate renewal;

(b) Submit to the department a fee prescribed in WAC 246-205-990; and

(c) Retake the entire basic supervisor course.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-081, filed 12/23/02, effective 1/23/03.]

246-205-091

Contractor certification.

(1) A contractor may advertise, offer to undertake, or perform decontamination, demolition, or disposal work at an illegal drug manufacturing or storage site only

after securing a certificate from the department.

(2) Applicants for department certification as an authorized contractor, shall submit to the department:

- (a) Evidence of being licensed, bonded, and insured as a general contractor under the provisions of chapter 18.27 RCW;
- (b) Evidence of department certification for each employee who will do work on an illegal drug manufacturing or storage site;
- (c) Documentation that the contractor has at least one department certified supervisor and one department certified worker;
- (d) A completed decontamination contractor application form; and
- (e) A fee as prescribed in WAC 246-205-990.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-091, filed 12/23/02, effective 1/23/03.]

#### 246-205-101

##### Reciprocity.

(1) The department may provide reciprocal certification for contractors, supervisors, and workers trained and certified in another state if standards and training are substantially equivalent to those of this chapter.

(2) Applicants for reciprocity shall submit to the department:

- (a) A completed application form for the type of certification being requested;
- (b) Documentation of specialized training for illegal drug manufacturing or storage site decontamination;
- (c) Evidence of successful completion of training required by the Federal Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; Washington Industrial Safety and Health Act regulations, chapter 49.17 RCW; and
- (d) A fee as prescribed in WAC 246-205-990.

(3) Prior to certificate approval, the applicant may be required to:

- (a) Submit additional information;
- (b) Successfully complete a refresher course; or
- (c) Pass a department-administered examination with a score of seventy percent or more.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-101, filed 12/23/02, effective 1/23/03.]

246-205-111

Performance standards.

Authorized contractors, including workers and supervisors, working at a decontamination site shall, at a minimum:

- (1) Perform all decontamination work only with department certified workers and supervisors;
- (2) File a work plan with and obtain approval from the local health department;
- (3) Perform work in accordance with the approved work plan;
- (4) Station on site a contractor-employed certified supervisor to oversee the activities performed;
- (5) Perform work meeting applicable requirements of state and local building codes;
- (6) Comply with applicable Federal Occupational Safety and Health Act, Public Law 91-596, 84 stat. 1590; and Washington Industrial Safety and Health Act regulations and requirements, chapter 49.17 RCW;
- (7) Comply with applicable requirements of chapter 70.105 RCW, Hazardous waste management; and chapter 173-303 WAC, Dangerous waste regulations;
- (8) Comply with applicable requirements of department of ecology and Environmental Protection Agency regulations;
- (9) Comply with applicable contractor regulations;
- (10) Notify the state and local jurisdictional health department of all work performed within ten days after completion of the project;



(11) Comply with all other applicable laws and regulations; and

(12) Comply with this chapter.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-111, filed 12/23/02, effective 1/23/03.]

#### 246-205-121

Denial, suspension, revocation of certification, and civil penalties.

(1) An initial, renewal, or reciprocal illegal drug manufacturing or storage site decontamination worker, supervisor, or contractor certificate will be denied when an applicant fails to meet the requirements of WAC 246-205-071, 246-205-081, 246-205-091 or 246-205-101.

(2) Disciplinary action against a decontamination worker, supervisor, or contractor may be taken for failing to comply with the requirements of chapter 64.44 RCW, or any rule adopted under chapter 64.44 RCW. Disciplinary action may be taken on any of the following grounds:

(a) Failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel;

(b) Failing to file a work plan;

(c) Failing to perform work pursuant to the work plan;

(d) Failing to perform work that meets the requirements of the department;

(e) Obtaining a certificate by error, fraud, or misrepresentation; or

(f) If the person has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(3) Disciplinary action against a decontamination worker, supervisor, or contractor may include, but not be limited to, denial, suspension, or revocation of certification.

(4) A contractor may be assessed a civil penalty not to exceed five hundred dollars for each violation in addition to certification denial, suspension, or revocation pursuant to this rule. Each day the violation continues shall be considered a separate violation.

(5) Adjudicative proceedings are governed by chapter 34.05 RCW, the Administrative Procedure Act; chapter 246-10 WAC; and this chapter.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-121, filed 12/23/02, effective 1/23/03.]

#### 246-205-131

##### Certified contractor list.

(1) The department shall maintain a list of authorized illegal drug manufacturing or storage site decontamination contractors.

(2) The department's authorized contractor list shall be made available to local health officials and other appropriate agencies semiannually, and to the public upon request.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-131, filed 12/23/02, effective 1/23/03.]

#### 246-205-510

##### Local health officer responsibilities.

As required by chapter 64.44 RCW, the local health officer's responsibilities shall include, but not be limited to:

- (1) Posting property;
- (2) Inspecting property;
- (3) Determining contamination;
- (4) Reporting contaminated property;
- (5) Notification of contaminated property;
- (6) Determining whether a contractor is required for decontamination;
- (7) Verifying decontamination; and

(8) Recording decontamination.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-510, filed 12/23/02, effective 1/23/03.]

246-205-520

Posting property.

(1) Within one working day of notification from a law enforcement agency of potential contamination, the local health officer shall post a written warning on the premises. The warning shall inform potential occupants that hazardous chemicals may exist on, or have been removed from the property and that entry is unsafe.

(2) Within fourteen days of notification, the local health officer shall inspect the property.

(3) If the property is contaminated, the local health officer shall post a written notice on the premises declaring that the officer intends to issue an order prohibiting use of the property as long as the property is contaminated.

(4) Within ten working days of determining the property is contaminated, the local health officer shall cause to be served an order prohibiting use as required under WAC 246-205-560.

(5) Within one working day of issuance of the order, the local health officer shall post the order in a conspicuous place on the property.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-520, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.40.070 [64.44.070] and chapter 64.44 RCW. 92-10-027 (Order 268B), § 246-205-520, filed 4/29/92, effective 5/30/92.]

246-205-530

Inspecting property.

Within fourteen days after a law enforcement agency or property owner notifies the local health officer of potential property contamination, the local health officer shall inspect the property.

(1) To enable the local health officer to determine contamination, the property inspection shall include, but not be limited to, an acquisition of data such as evidence of:

(a) Hazardous chemical use or storage on site;

(b) Chemical stains;

(c) Release or spillage of hazardous chemicals on the property; or

(d) Glassware or other paraphernalia associated with the manufacture of illegal drugs on site.

(2) As part of the property's inspection, the local health officer may request copies of any law enforcement reports, forensic chemist reports, and any department of ecology hazardous material transportation manifests needed to evaluate:

(a) The length of time the property was used as an illegal drug manufacturing or storage site;

(b) The size of the site actually used for the manufacture or storage of illegal drugs;

(c) What chemical process was involved in the manufacture of illegal drugs;

(d) What chemicals were removed from the scene; and

(e) The location of the illegal drug manufacturing or storage site in relation to the habitable areas of the property.

(3) The local health officer may coordinate the property's inspection with other appropriate agencies. At the request of the local health officer, the Washington state department of ecology may conduct an environmental assessment and may sample the property's ground water, surface water, septic tank water, soil, and other media as necessary to enable the local health officer to evaluate the long-term public health threats.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-530, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.40.070 [64.44.070] and chapter 64.44 RCW. 92-10-027 (Order 268B), § 246-205-530, filed 4/29/92, effective 5/30/92.]

246-205-531

Sampling procedures.

(1) The analytical results obtained through sampling may be used as a method to determine contamination. Types of sample collection include, but are not limited to:

(a) Nonporous surface;

(b) Porous surface;

(c) Air;

(d) Drinking water;

(e) Ground water;

(f) Surface water;

(g) Soil; and

(h) Septic system.

(2) Collection of samples shall be performed by department of ecology staff; department of health certified CDL supervisors; or local health officers using:

(a) Standards and protocols to ensure accuracy and the ability to produce similar results with repeated sampling;

(b) Proper swabbing techniques to collect a representative sample of the area being sampled; and

(c) Proper care and prudent action to avoid contamination during sampling.

(3) All samples collected, transported, stored, and analyzed under the provisions of this section must be secured to assure an unbroken chain-of-custody as described in the American Society of Testing Materials Standard D 4840.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-531, filed 12/23/02, effective 1/23/03.]

246-205-540

Determining contamination.

(1) The local health officer shall make a determination of contamination when the inspection reveals the property is contaminated.

(2) If designated contaminated, the local health officer shall post and cause to be served an order prohibiting use of all or portions of the property as required under

WAC 246-205-520 and 246-205-560.

(3) If the local health officer determines the property is not contaminated, the local health officer shall document the findings. The local health officer's documentation shall include:

- (a) Findings;
- (b) Conclusions;
- (c) Name of the property owner;
- (d) Mailing and street address of the property owner;
- (e) Parcel identification number and legal description of the property; and
- (f) Clear directions for locating the property.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-540, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.40.070 [64.44.070] and chapter 64.44 RCW. 92-10-027 (Order 268B), § 246-205-540, filed 4/29/92, effective 5/30/92.]

246-205-541

Decontamination standards.

The decontamination standards include:

- (1) Methamphetamine of less than or equal to 0.1 micro grams per 100 square centimeters;
- (2) Total lead of less than or equal to 20 micro grams per square foot;
- (3) Mercury of less than or equal to 50 nano grams per cubic meter in air; and
- (4) Volatile organic compounds (VOCs) of 1 part per million total hydrocarbons and VOCs in air.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-541, filed 12/23/02, effective 1/23/03.]

246-205-550

Reporting contaminated property.

- (1) When property is determined contaminated, the local health officer shall report



the contaminated property to the state department of health:

- (a) By telephone or e-mail within one working day; and
- (b) In writing within ten working days.

(2) The local health officer's written contamination report to the state department of health shall include:

- (a) Description of the findings;
- (b) Conclusions;
- (c) Name of the property owner;
- (d) Mailing and street address, including zip code and county, of the property owner;
- (e) Parcel identification number and legal description of the property to including township and section;
- (f) Tax account number; and
- (g) Date property determined contaminated.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-550, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.40.070 [64.44.070] and chapter 64.44 RCW. 92-10-027 (Order 268B), § 246-205-550, filed 4/29/92, effective 5/30/92.]

246-205-560

Notification of contaminated property.

(1) Within ten working days after the local health officer's determination that a property is contaminated, the local health officer shall cause to be served, either personally or by certified mail, return receipt requested, an order prohibiting use to all known:

- (a) Occupants; and
- (b) Persons having an interest in the property as shown upon the records of the auditor's office of the county in which the property is located.

(2) If the whereabouts of persons described under subsection (1) of this section

is unknown and the same cannot be ascertained by the local health officer in the exercise of reasonable diligence, and the health officer makes an affidavit to that effect, then the serving of the order upon such persons may be made by:

- (a) Personal service; or

- (b) Mailing a copy of the order by certified mail, postage prepaid, return receipt requested:

- (i) To each person at the address appearing on the last equalized tax assessment roll of the county where the property is located; or

- (ii) At the address known to the county assessor.

(3) The local health officer shall also mail a copy of the order addressed to each person or party having a recorded right, title, estate, lien, or interest in the property.

(4) The local health officer's order shall:

- (a) Describe the local health officer's intended course of action;

- (b) Describe the penalties for noncompliance with the order;

- (c) Prohibit use of all or portions of the property as long as the property is contaminated;

- (d) Describe what measures a property owner must take to have the property decontaminated; and

- (e) Indicate the potential health risks involved.

(5) The local health officer shall:

- (a) File a copy of the order prohibiting use of the property with the county auditor;

- (b) Provide a copy of the order to the local building or code enforcement department; and

- (c) Post the order in a conspicuous place on the property within one working day of issuance of the order.

(6) The local health officer's order shall advise that:

(a) A hearing before the local health officer or local health board shall be held upon the request of a person required to be notified of the order;

(b) The person's request for a hearing shall be made within ten days of the local health officer's serving of the order;

(c) The hearing shall be held not less than twenty days nor more than thirty days after the serving of the order; and

(d) In any hearing concerning whether property is contaminated, the property owner has the burden of showing that the property is decontaminated and meets the decontamination standards of WAC 246-205-541.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-560, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.40.070 [64.44.070] and chapter 64.44 RCW. 92-10-027 (Order 268B), § 246-205-560, filed 4/29/92, effective 5/30/92.]

#### 246-205-570

##### Decontamination.

(1) An owner of contaminated property who desires to reduce the contamination shall use the services of an authorized contractor unless otherwise authorized by the local health officer.

(2) The local health officer shall provide the property owner with a list of authorized contractors upon request.

(3) When an authorized contractor is required for decontamination, the property owner shall have a written work plan approved by the local health officer before starting decontamination.

(4) When an authorized contractor is required for decontamination, the contractor shall prepare the work plan in accordance with this chapter and chapter 64.44 RCW. When the local health officer determines the services of an authorized contractor are not necessary, the local health officer shall take appropriate measures to ensure the property is decontaminated consistent with the purposes of chapter 64.44 RCW.

(5) The property owner or the contractor shall decontaminate the property according to the approved work plan and to meet the decontamination standards described in WAC 246-205-541.

(6) The property owner shall be responsible for:

(a) The costs of any property testing which may be required to demonstrate the presence or absence of hazardous chemicals;

(b) The costs of the property's decontamination and disposal expenses, as well as costs incurred by the local health officer resulting from the enforcement of this chapter;

(c) Keeping records documenting decontamination procedures and submitting notarized copies of all records to the local health officer; and

(d) Petitioning the local health officer to review the decontamination records and to declare the property decontaminated.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-570, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.40.070 [64.44.070] and chapter 64.44 RCW. 92-10-027 (Order 268B), § 246-205-570, filed 4/29/92, effective 5/30/92.]

#### 246-205-580

##### Verifying decontamination.

Within ten working days of a request for review of decontamination records, the local health officer:

(1) Shall review the documentation to verify decontamination was performed according to the approved work plan and the applicable decontamination standards in WAC 246-205-541 are met;

(2) May visit the property site to assess the thoroughness of the decontamination;

(3) May require the property owner to provide more extensive testing and assessment of the property site by an independent laboratory or firm qualified to perform such testing and assessment.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-580, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.40.070 [64.44.070] and chapter 64.44 RCW. 92-10-027 (Order 268B), § 246-205-580, filed 4/29/92, effective 5/30/92.]

#### 246-205-590

##### Recording decontamination.

If, after review of the information in WAC 246-205-580, the local health officer determines the property has been decontaminated, the local health officer shall within ten working

days:

- (1) Record a release for reuse document in the real property records of the county auditor where the property is located indicating that to the best of his or her knowledge, the property was decontaminated in accordance with this chapter.
- (2) Send a copy of the release to the property owner.
- (3) Send a copy of the release to the state department of health.
- (4) Send a copy of the release to the local building or code enforcement department.

[Statutory Authority: RCW 64.44.070. 03-02-022, § 246-205-590, filed 12/23/02, effective 1/23/03.]

246-205-990

Fees.

- (1) The department shall charge fees for issuance and renewal of certificates. The department shall set the fees by rule.
- (2) The fees shall cover the cost of issuing certificates, filing papers and notices, and administering this chapter. The costs shall include reproduction, travel, per diem, and administrative and legal support costs.
- (3) Fees are nonrefundable and shall be in the form of check or money order made payable to the department.
- (4) The department shall require payment of the following fees upon receipt of application:
  - (a) Twenty-eight dollars shall be assessed for each initial, renewal, or reciprocal worker certificate application.
  - (b) Twenty-eight dollars shall be assessed for each initial, renewal, or reciprocal supervisor certificate application.
  - (c) Five hundred seventy dollars shall be assessed for each initial, renewal, or reciprocal authorized contractor certificate application. The applicant's certificate shall expire annually on the expiration date of the contractor's license issued under the provisions of chapter 18.27 RCW.

(d) Two hundred seventeen dollars shall be assessed for each initial application and fifty-two dollars shall be assessed for each renewal application for illegal drug manufacturing or storage site decontamination training course approval.

[Statutory Authority: RCW 43.70.250 and 43.70.110. 03-13-123, § 246-205-990, filed 6/18/03, effective 7/19/03. Statutory Authority: RCW 43.70.250, 70.90.150, and 43.20B.250. 01-14-047, § 246-205-990, filed 6/29/01, effective 7/30/01. Statutory Authority: RCW 43.70.250. 00-02-016, § 246-205-990, filed 12/27/99, effective 1/27/00; 99-12-022, § 246-205-990, filed 5/24/99, effective 6/24/99. Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. 91-04-007 (Order 125SB), § 246-205-990, filed 1/24/91, effective 4/1/91.]





## **Appendix C**

### **To Cleanup and Governance Recommendations**

#### **RCW 64.44**

##### **64.44.010(3)**

###### **Current Language**

“Hazardous chemicals” means the following substances used in the manufacture of illegal drugs: (a) Hazardous substances as defined in RCW 70.105D.020, and (b) precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the state board of pharmacy, has determined present an immediate or long-term health hazard to humans.

###### **Proposed Language**

“Hazardous chemicals” means the following substances associated with the manufacture of illegal drugs: (a) Hazardous substances as defined in RCW 70.105D.020, (b) precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the state board of pharmacy, has determined present an immediate or long-term health hazard to humans, and (c) the controlled substance(s) being manufactured, as defined in RCW 69.50.101.

###### **Brief Explanation of Suggested Change**

Need to include the definition of the drug being manufactured within the definition of “hazardous chemical.”

See Recommendation 1 in the Final Report.

##### **64.44.010(5)**

###### **Current Language**

“Property” means any property, site, structure, or part of a structure which is involved in the unauthorized manufacture or storage of hazardous chemicals. This includes but is not limited to single family residences, units of multiplexes, condominiums, apartment buildings, boats, motor vehicles, trailers, manufactured housing, or any shop, booth, or garden.

###### **Proposed Language**

“Property” means any real or personal property, or segregable part thereof, that is involved in or affected by the unauthorized manufacture or storage of hazardous chemicals. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings, boats, motels, hotels, motor vehicles, trailers, manufactured housing, any shop, booth, garden, or storage shed, and all contents of the above-mentioned items

**Brief Explanation of Suggested Change**

Need to expand the definition of “property” to include personal property. A lot of the contaminated items are personal property, i.e. toys, furniture, appliances. The local health officer needs authority to properly dispose of and decontaminate personal property as well as real property.

It might be simpler to state “all the contents of the above mentioned items,” in lieu of listing all the various types of personal property that could be contaminated by the drug lab.

**New Section****64.44.010(7)****Proposed Language**

“Independent Third Party Sampling” means that the person conducting the sampling and testing is not an employee, agent, representative, partner, joint venturer, shareholder, or parent or subsidiary company of the contractor, the contractor’s company or property owner.

**Brief Explanation of Suggested Change**

This definition mirrors Colorado’s definition for “independent.” Oregon also requires independent third party sampling, but they do not define it.

**64.44.020****Current Language**

The local health officer shall post a written warning on the premises within one working day of notification of the contamination and shall inspect the property within fourteen days after receiving the notice of contamination.

**Proposed Language**

The local health officer shall cause a posting of a written warning on the premises within one working day of notification of the contamination and shall inspect the property within fourteen days after receiving the notice of contamination.

**Brief Explanation of Suggested Change**

This gives local health the ability to grant authority to law enforcement to post the initial warning instead of requiring local health to make an unnecessary trip, which is a waste of resources, just to post the warning. The provision, as currently written, has been very burdensome on local health.

**New Paragraph****64.44.020**

**Current Language**

Insert between the 3rd and 4th paragraphs of the current statute

**Proposed Language**

If access to the property is denied, a superior, district or municipal court within the jurisdiction of the property may, based upon cause to believe that the property is contaminated, issue warrants for the purpose of conducting administrative inspections and seizure of property appropriate to the inspections.

**Brief Explanation of Suggested Change**

Currently, local health does not have administrative search warrant authority to enter the contaminated property if they are denied access either by the cooker or the property owner. Access is paramount to Local Health's determination of the extent of contamination and the risk to public health.

**64.44.030****Current Language**

If after the inspection of the property, the local health officer finds that it is contaminated, then the property shall be found unfit for use. The local health officer shall cause to be served an order prohibiting use either personally or by certified mail, with return receipt requested, upon all occupants and persons having any interest therein as shown upon the records of the auditor's office of the county in which such property is located. The local health officer shall also post the order prohibiting use in a conspicuous place on the property...The officer shall prohibit use as long as the property is found to be contaminated. A copy of the order shall also be filed with the auditor of the county in which the property is located, and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law...

**Proposed Language**

(1) If after the inspection of the property, the local health officer finds that it is contaminated, then the local health officer shall issue an order declaring the property unfit and prohibiting its use. The local health officer shall cause the order to be served either personally or by certified mail, with return receipt requested, upon all occupants and persons having any interest therein as shown upon the records of the auditor's office of the county in which such property is located. The local health officer shall also cause the order to be posted in a conspicuous place on the property... The officer shall prohibit use as long as the property is found to be contaminated. A copy of the order shall also be filed with the auditor of the county in which the property is located, and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law...

**Brief Explanation of Suggested Change**

Currently local health gives a copy of an unfit for use order to the county auditor for the property, which gets listed on the property's title. The Program and local health feel that it is important to also post an unfit for use order with the Dept of Motor Vehicles to address contaminated cars, boats, motorcycles, etc...

**New Section****64.44.030(2)****Proposed Language**

(2) If the local health officer determines immediate action is necessary to protect public health, safety or the environment, the officer may issue or cause to be issued an emergency order, and any person to whom such an order is directed shall comply immediately. Emergency orders issued pursuant to this statute shall expire no later than 72 hours after issuance and shall not impair the health officer from seeking an order under subsection 1.

**Brief Explanation of Suggested Change**

Local health needs authority to post emergency orders where there may be imminent harm to the public. This section has been drafted to confer that authority on local health for a limited 72 hour period, a time frame within which the health officer should be able to obtain an order under Section 1.

**64.44.040****Current Language**

The city or county in which the contaminated property is located may take action to condemn or demolish property or to require the property be vacated or the contents removed from the property. The city or county may use an authorized contractor if property is demolished, decontaminated, or removed under this section. NO city or county may condemn or demolish property pursuant to this section until all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted.

**Proposed Language**

(1) Upon issuance of an order declaring property unfit and prohibiting its use, the city or county in which the contaminated property is located may take action to prohibit use, occupancy, or removal of such property; condemn, decontaminate, or demolish property; or require the property be vacated or the contents removed from the property. The city or county may use an authorized contractor if property is demolished, decontaminated, or removed under this section. The city, county and contractor shall comply with all orders of the health officer during these processes. No city or county may condemn, decontaminate, or demolish property pursuant to this section until all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted, but may prohibit

use, occupancy, or removal of contaminated property pending appeal of the order.

### **Brief Explanation of Suggested Change**

For counties with Health Districts (which are a separate legal entities from county government, unlike Health Departments), there is a need to provide a better statutory mechanism to enable the county to act on the basis of a health officer's order declaring the property unfit for use. The statute also needs to give specific authority to law enforcement to act on that same health officer's order requiring "no use of the property."

### **New Section**

#### **64.44.040(2)**

#### **Proposed Language**

(2) (a) It shall be unlawful for any person to enter upon any property, or to remove any property, that has been found unfit for use by a local health officer pursuant to RCW 64.44.030.

(b) This section shall not apply to: (i) health officials or law enforcement officials performing their official duties; (ii) authorized contractors or owners performing decontamination pursuant to authorization by the local health officer; and (iii) any person acting with permission of a local health officer, or of a superior court hearing an appeal of a decision of the local health officer.

(c) Any person who violates this section shall be guilty of a misdemeanor.

#### **64.44.050**

#### **Current Language**

An owner of contaminated property who desires to have the property decontaminated shall use the services of an authorized contractor unless otherwise authorized by the local health officer. The contractor shall prepare and submit a written work plan for decontamination to the local health officer. The local health officer may charge a reasonable fee for review of the work plan. If the work plan is approved and the decontamination is completed and the property is retested according to the plan and properly documented, then the health officer shall allow reuse of the property. A release for reuse document shall be recorded in the real property records indicating the property has been decontaminated in accordance with rules of the state department of health.

#### **Proposed Language**

(1) An owner of contaminated property who desires to have the property decontaminated shall use the services of an authorized contractor unless otherwise authorized by the local health officer. The contractor and property owner shall prepare and submit a written



work plan for decontamination to the local health officer. The local health officer may charge a reasonable fee for review of the work plan. If the work plan is approved and the decontamination is completed and the property is retested according to the plan and properly documented, then the health officer shall allow reuse of the property. A release for reuse document shall be recorded in the real property records indicating the property has been decontaminated in accordance with rules of the state department of health. The property owner shall be responsible for (a) the costs of any property testing which may be required to demonstrate the presence or absence of hazardous chemicals and (b) the costs of the property's decontamination and disposal expenses, as well as costs incurred by the local health officer resulting from the enforcement of this chapter.

#### **Brief Explanation of Suggested Change**

Currently, only the contractor is required to submit a work plan, even though the local health officer can determine that the property owner can clean-up the property. The property owner should also be required to submit and have approved a work plan to the local health officer. The property owner should be held to the same standard as the contractor, since the public health is still at risk, regardless of who cleans the property.

New language also clearly authorizes full cost recovery by local health.

#### **New Section**

##### **64.44.050(2)**

#### **Proposed Language**

(2) The local health officer may establish a time period in which decontamination shall be completed. The local health officer, city or county may assess a fine or institute appropriate action upon failure to meet the decontamination deadline.

#### **Brief Explanation of Suggested Change**

New Section (2) will ensure that the property is cleaned-up in a timely fashion. However, DOH believes that local health should have the discretion to determine the time frame and the amount of the fine.

##### **64.44.060(1)**

#### **Current Language**

A contractor may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health. The department shall establish performance standards for contractors by rule in accordance with chapter 34.05 RCW, the administrative procedures act. The department shall train and test, or may approve courses to train and test, contractors and their employees on the essential elements in assessing property used as an illegal drug manufacturing or storage site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment,

methods for proper decontamination, demolition, removal and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, the contractor or employee shall be certified.

#### **Proposed Language**

A contractor, supervisor or worker may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health. The department shall establish performance standards for contractors, supervisors and workers by rule in accordance with chapter 34.05 RCW, the administrative procedures act. The department shall train and test, or may approve courses to train and test, contractors, supervisors and workers ~~and their employees~~ on the essential elements in assessing property used as an illegal drug manufacturing or storage site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment, methods for proper decontamination, demolition, removal and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, and after a background check, the contractor, supervisor, or worker ~~or employee~~ shall be certified.

#### **Brief Explanation of Suggested Change**

Currently this section only refers to “contractors” and “employees.” However, DOH certifies, contractors, supervisors and workers under WAC 246-205, and all three need to be referenced in the statute, so appropriate action can be taken against them, when they violate the statute and rules.

DOH needs to be able to conduct background checks on applications for contractors, supervisors and worker certification. Background checks would allow DOH to determine if the applicants have a history of drug abuse, theft, etc...and are therefore, unsuitable for a certificate to clean drug labs.

#### **64.44.060(4)**

##### **Current Language**

The department may deny, suspend, or revoke a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to this chapter. A certificate may be denied, suspended, or revoked on any of the following grounds: (a) failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel; (b) Failing to file a work plan; (c) Failing to perform work pursuant to the work plan; (d) Failing to perform work that meets the requirements of the department; (e) the certificate was obtained by error, misrepresentation, or fraud; or (f)...

##### **Proposed Language**

The department may deny, suspend, ~~or~~ revoke, or place restrictions on a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to

this chapter. A certificate may be denied, suspended, revoked, or have restrictions placed on it on any of the following grounds: (a) failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel; (b) Failing to perform decontamination, demolition, or disposal work using DOH certified decontamination personnel; ~~(b c)~~ Failing to file a work plan; ~~(c d)~~ Failing to perform work pursuant to the work plan; ~~(d e)~~ Failing to perform work that meets the requirements of the department and the requirements of the local health officers; (f) Failing to properly dispose of contaminated items ~~(e g) the certificate was obtained by error, misrepresentation, or fraud;~~ committing fraud or misrepresentation in: (i) applying for or obtaining a certification, recertification, or reinstatement; (ii) seeking approval of a work plan; and (iii) documenting completion of work to the department or local health officer; (h) failing to cooperate with the department or the local health officer; (i) failing the evaluation and inspection of decontamination projects pursuant to RCW 64.44.090; (j) conviction of any gross misdemeanor or felony. For purposes of this subsection, the term “conviction” is intended to apply to all instances in which an adjudication of guilt has occurred, whether or not a deferred or alternative sentence has been imposed or (f k)...

#### **Brief Explanation of Suggested Change**

Adds additional means, by which DOH can deny, suspend, revoke or place restrictions on an applicant or on a contractor, supervisor, or worker’s certification. There have been instances where non-certified individuals were cleaning up contaminated property. In addition, contractors have improperly disposed of contaminated items and lied or misrepresented themselves to DOH or local health during the course of an investigation.

#### **64.44.060(5)**

##### **Current Language**

A contractor who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation

##### **Proposed Language**

A contractor, supervisor, or worker who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation

#### **Brief Explanation of Suggested Change**

DOH would like to be able to fine supervisors and workers, in addition to contractors, for violating the RCW or WAC. The program has encountered problems with supervisors and workers, performing decontamination work without a valid certificate, violating the work plan, improperly disposing of contaminated property and stealing contaminated property from the site.

**64.44.070(2)****Current Language**

The department shall adopt rules for decontamination of a property used as an illegal drug laboratory and methods for the testing of ground water, surface water, soil, and septic tanks for contamination. The rules shall establish decontamination standards for hazardous chemical, including but not limited to methamphetamine, lead, mercury, and total volatile organic compounds.

**Proposed Language**

The department shall adopt rules for decontamination of a property used as an illegal drug laboratory and methods for the testing of porous and non-porous surfaces, ground water, surface water, soil, and septic tanks for contamination. The rules shall establish decontamination standards for hazardous chemicals, including but not limited to methamphetamine, lead, mercury, and total volatile organic compounds. The department shall also adopt rules pertaining to independent third party sampling to verify satisfactory decontamination of property deemed contaminated and unfit for use.

**Brief Explanation of Suggested Change**

Third Party sampling is a major priority for DOH-CDL Program. Currently, the contractors who decontaminate the property are taking their own samples and submitting them to the labs. Local Health is concerned that the contractors are not taking representative samples throughout the contaminated property. The Program and Local Health feel that an unbiased third party needs to be responsible for sampling the property. Currently, both Colorado and Oregon allow for independent third party sampling in order to avoid conflicts of interests and biased results.

**New Section****64.44.090****Proposed Language**

The Department shall evaluate annually a number of the property decontamination projects performed by licensed contractors to determine the adequacy of the decontamination work, using the services of an independent environmental contractor or state or local agency. If a project fails the evaluation and inspection, the contractor is subject to a civil penalty and license suspension, pursuant to RCW 64.44.060(4) and (5); and the contractor is prohibited from performing additional work until deficiencies have been corrected.

**Brief Explanation of Suggested Change**

This is an auditing scheme, to ensure that the contractors are doing work that meets the requirements of the department and the local health officer.